

A N
INTRODUCTION

To the Knowledge of the

Stile of Writs,

Simple and Compound, made use of in
SCOTLAND; Containing Directi-
ons for Drawing SECURITIES, In
Cases which most commonly occur;
with Examples; according to the
best Modern Practice.

Written for the Use of the Students in *Spot-
tiswood's* Colledge of Law, and now Pu-
blish'd for the Common Good.

The Second Edition with Additions,

By *John Spotiswood* of *Spotiswood* Advocat.

EDINBURGH,

Printed by *John Moncar*, and Sold by *William Broun*
Bookseller, at his Shop, on the North-side of the
street, a little above the Cross. 1715.



BY an Act of His Majesty's Privy Council dated the 20 Day of November, 1707 Years. It is ordered, That none shall Re-Print, Import or Vend any Copy of this Book, without the Consent of the Author, for the space of 19 Years, and under the Pains mentioned in the said Act.

To the Honourable,
Mr. DAVID ERSKIN of Dun, One of
the Senators of the Colledge of Ju-
stice, and one of the Lords Commis-
sioners of Justiciary.

My LORD,

THE Intimation I have from the Hi-
story of our Country; That our An-
cestors about two Centurys since, Did in
an Eminent manner strenuously, and with
Success Co-operate, in Restoring our
Holy Religion to it's Primitive Integrity,
by freeing it from the Errours and Su-
perstitions of Popery; And upon Consid-
eration of their Labour, That by the No-
mination, and with Unanimous Consent
of the Church, Nobility and Gentry; Your
Lordships Ancestor, John Erskine of Dun
was Honoured with the Office of Superin-
tendent of Angus and the Merns, as
Mr. John Spotiswood was Constituted
Superintendent of the Merse and Lothi-
ans, which Office they Discharg'd to
great Advantage for the Church, and
with Honour to themselves and Poster-
ity. And likewise when I call to Mind,
our Friendship (grounded on that sort of Af-
finity) with our good Correspondence, when
Your Lordship was at the Barr, and still
continuing: The Considerations of these
Circumstances, fill my Spirit with a Re-
spectful

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spectful Amity to Your Lordship, and made
me wish for an Opportunity of giving some
Real External Testimony of these Inward
Sentiments of my Mind; And for this
Reason only, I now prefix Your Lord-
ship's Name to this Book. I have no de-
sign to flatter you with Praises of your
other Ancestors, who are Recorded in
our History for their Skill in the Arts of
Peace and War, or with Elogiums due
to your own Personal Merit, which hath
raised you to these Honourable Places
in the High Courts of Justice, Civil and
Criminal; And that you might not be
Troubled in Defending this Book, I de-
lay'd to inscribe it to you, till it had suf-
fer'd the Tryal in the first Edition, which
met with a kindly Reception, so that a
second Impression was demanded. My
chief aim in this Dedication, is to let the
World know, That I love Good Men,
and those descended from Worthy Fa-
thers: But especially, that among ma-
ny, many others. I am.

My LORD.

Your Lordship's,

Most Humble,

Much obliged, and

Very Affectionat Servant,

Jo. Spottiswood.

PREFACE,

FOR the use of the Gentlemen,
I Direct in the Study of the Scots
Law, I did draw out of my Co-
lections I had made, while in a
Writing Chamber; and in the practice
of Business, both before and since I was
an Advocate, such of my Observations
as I thought might Instruct them in the
Knowledge of the Stile of Obligations,
Securities and Conveyances; and I did
put them in that Order and Method they
are now Printed in, for the Use of the
Publick.

The Directions, I have given for
drawing Writs, are not from speculative
Notions; but from Remarks and Obser-
vations taken from the Writs themselves;
and Approven by my own Experience:

*

For

P R E F A C E.

For I was near six Years in a Writing-Chamber, in continual Practice; under the Direction of the ablest Writer and Conveyancer of the last Age, James Hay of Carribber, Writer to the Signet; who, for his Skill and Integrity, was Employed by the Chief of our Nobility and Gentry (and I have known many come from their ordinary Writers, to employ him in their highest Concerns, while the meaner Matters, were still left with their Ordinaries,) The Stiles I have given, are for the most part of Mr. Hay's proper Dictating, in modern Occurrences.

*In composing this Treatise, I look'd into the Method of Writers in this kind, both English, French, Dutch and Latin; But finding in them only a bare and naked Stile in two or three Cases, I thought that Method very Jejune, and found it did not answer my Purpose, which was in a Scientifick and Rational way to teach my Students the Art of Writing. For which end I did lay down Rules taken from my own Observations; both while I was with Carribber, and since my return from the Study of the
Laws*

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Laws in foreign Universities : In this I had no precedent, save some hints I took from Esqr. West's Symbolography : And therefore, my wanting of a Guide, will excuse the boldness in venturing to reduce into Rules, and in Fashioning into a Scientifick Form, what was look'd on hitherto to be incapable of Rule, and only acquirable as a Mechanical Art, by Practice.

Finding this Treatise was like to swell up to a greater number of Sheets, than at first Undertaking I design'd for it, I was forc'd to Contract, near the end, my Course of Thought and Design: However, in this Part you have, if I mistake not, a full Treatise of Bonds, and other personal or temporary Rights and Conveyances of all sorts. I thought to have Treated briefly of the Conveyance of Irredeemable Rights, Real and Perpetual, as of Lands Tenements and Pertinents thereof; But finding that my Collections on that Subject, would make a Treatise near as big as this, and that I could not, to my own satisfaction, Abridge them: I was advised to refer that Mat-

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ter to another Opportunity. And by the quick Sale of the first Edition, I find this Undertaking acceptable to the Publick, which encourages me, to let my Friends know, that they may very shortly Expect a full and compleat Treatise of Real Rights and Conveyances of all sorts, very near ready for the Press, and which I purpos'd to have finish'd, and published before this Second Edition. but now shall not be long wanting.

This part of the Law, concerning the Stile of Writs, may be Treated of in various Ways, as in my Lectures I shew'd to the Students in Scots Law. For, besides the Way set down in this Treatise, I pointed out to them the essential and accidental Clauses of the several sorts of Writs and Conveyances; and this I call'd the Analytical Way. For illustration whereof, I gave them several Stiles Annalyz'd, which is as useful to a Writer, as a Sceleton and Anatomy Tables and Carts are to a Student of Medicine. For when a Lawyer is to consider and read a Paper, he may look first on the Schem of that Writ as Analyz'd, where at a
glance

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glance he has a full view of all the necessary Clauses of the Writ, and in reading the Paper to be considered, he notices particularly if these be rightly expressed, and if any of them be wanting. Another way, I called the Nomological, which did illustrate and shew the import of the Clauses in Writs, by Observations taken from the Practick and Decisions: Both which Ways are the Subject of another Work, whereby great Light will be given to the Art of Writing.

In this Edition I have published several Stiles, I found were omitted in the former, and seeing the Law of Patronage is now Restored. I have given the Stile of Writs of Presentation in several Cases, and also a new Stile of a Call of a Minister by the Heritors, &c. I have put into Tables, the Act of the Brit: Parl. concerning those Writings, which must be on Stamped Paper, which will be known by a glance, and have added the Exposition of the Learn'd, of the word Deeds and Bail-bonds, shewing the Conveyances &c. which are thought to fall under these general Names. And

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And I well understanding the perfect Knowledge of Writing cannot be attained without Practise, for getting whereof, there is no place more proper than a Writing Chamber: But finding that the Stile Books ordinarily written there, are without order and without choise: I have thought fit to Communicat the Scheme of a Stile-Book, Form'd by James Hay of Carribher for the use of the Gentlemen Educated in his Writing Chamber; In which he has particular regard to Sir George Mackenzie's Institutions of the Scots Law, designing it to serve as a Comentary on that Book for the use of Writers: It is not pretended that all kinds of Writings or Summonds are brought into this Schem, but only such as Sir George mentions in that Book, and the Gentleman who shall be at pains to make a Collection according to this Model, will surely find Advantage by it, and will improve himself in the knowledge as well of the Law, as of the Stile in Writs: And it is a great loss to Students, that Mr Hay Dyed, before he made any Progress in this design.

Note



(2)
NOTE of *Stiles and Forms*
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ing to the order of Sir
George Mackenzie's In-
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An

(1)

An Introduction to the Knowledge of the Stile of Writs, Simple and Compound, made use of in Scotland.

Henry Home



BEING none can fully Understand, or surely Practise the Law, unless they know the Form and Nature of Writs and Securities; therefore an Explanation thereof ought to be made to the Students of the Laws.

These Writs are either Judicial, or Extra-judicial.

Judicial, are these which relate to Processes, as the Claims, Summonses, Petitions, Answers, Exceptions and Defences of Parties, with the Sentences and Orders of the Judges upon them, &c.

Extra-judicial Writs, are these which are perfected out of Judgment; but more chiefly such as declare the voluntary Agreement of Parties, their Bonds and Obligations, and Conveyances, Acquittances and Dis-

A charges,

charges, &c. whether the Subject and Matter mentioned therein, be depending in Judgment and Plea before any Court, or not.

The First and most frequent of Extra-judicial Writs, is a Bond or Obligation, which may be called, The Foundation and Ground of all others: For Bonds occasion other Securities, and upon them Diligences, Action, Execution are founded, and the Conveyance of all these give rise to many various Forms of Writs.

Not troubling you with the nice Definition and Division of Bonds given by the Emperor *Justinian*, and the Doctors of the Civil Law; let it suffice, at this time, to tell you, That by a Bond or Obligation is here mean't, a formal Writing in Stamped Paper or Parchment, duely Sign'd, whereby a Person acknowledges himself to be Owing and Adebted to another, a certain Sum or other Thing, and obliges himself to pay the Money, deliver the Thing, or perform the Deed. In which Obligations, besides the Parties Names, are to be considered, the Sum, Thing, or Deed due; the Time, Place, Manner of Payment, Delivery or Performance; and sometime a Sum, in name of Liquidate Expence, or a Penalty, to be paid.

In every Obligation there are Two Parties; one is called the Creditor, the other the

the Debitor; and by diverse other more special Names, according to the diverse and sundry Forms of Obligations and Contracts.

The Creditor is he, to whom any thing is due by Obligation.

The Debitor is he, who is bound.

Bonds are divided into many kinds: And this Variety in the Stile and Form (for nothing beside that, is here to be treated of) proceeds from the Quality of the Debitor, or of the Creditor, or of the Thing which enters into the Obligation, or of the Security propos'd.

With respect to the Debitor, Bonds are granted by single Persons, or by Societies and Incorporations.

When granted by single Persons, there is one Principal, or many Principals; or, one or many Principals, with Cautioners one or many.

These single Persons grant the Bond for themselves, or for, or with Consent of another; as are, Bonds given by a Tutor for his Pupil; By a Minor, with Consent of his Tutors; By one Interdicted, with Consent of the Person to whom he is interdicted; By a Wife, with Consent of her Husband, in order to affect her Heritage; By a Factor for his Constituent.

The Form of Bonds is various, with respect to the Creditor, who is either a single

Person, and takes the Bond to himself, and for his own behoof; and these terminat in the Creditor's own Person, or are extended to his Heirs or Assignees, with or without Limitation; and these Heirs are nominated or substituted one after another, or not: Or, the same Creditor acts in the Name, and for the Behoof of another; such as, Bonds granted to Tutors or Curators, in name of the Pupil and Minor; To a Factor, in name of his Constituent; To a Magistrat or Treasurer of a Burgh, in name of the Community; To an Administrator, or Box-master of an Incorporation, in name of the Incorporation; To a Parent, for himself, and in name and behalf of a Child; To a Husband and Wife, in conjunct Fie and Liferent.

The Stile of the Bond varies, through the Nature of the thing which enters into the Obligation, or of the Cause of Granting the Bond; and which are so many, as cannot well be enumerated. Now Bonds, with respect to their Cause, are either for payment of Money; or for performance of a Deed stipulated to be done. Again, Bonds for payment of Money, are either Gratuitous, as Donations, or Provisions to Children; or they are Onerous, as for borrowed Money, for Price of Goods & Things moveable or immoveable, or Annual Pensions.

The Nature of the Security propos'd by the Debitor, occasions great variety in

In the Stile of Bonds, which is either Simple or Compound. All Simple Bonds are only Personal; but Compound Obligations are either Real, or Personal only, or with and under certain Conditions and Provisions, or without them. The Real Bonds contain Security, either in Immoveables, as Lands, Tenements, &c. and are better known by the name of Heretable Bonds; or they give Security in Moveable Goods, and they contain both Real and Personal Security; for, regularly, there are none which are simply Real, seing all Bonds whatever, are in some part Personal, binding the Person of the Granter to perform one thing or other. By simple Bonds is meant, such as contain only the Essential and Ordinary Clauses of a Bond, as will appear in the Stile of a Bond for borrowed Money. And by Compound Bonds is signified, These that, beside the ordinary Clause, comprehends sundry others, as Provisions and Conditions, other Obligations, of Assignations for further Security, and the like.

Personal Bonds are these, wherein the Creditor satisfies himself in the Person and Promise of the Debtor, and follows his Faith, looking on him as a Man of Honesty and Ability, *i. e.* That he is willing and able truly to perform what he is bound to. On the other hand, Bonds Real are these, wherein the Creditor, for his further Security

erty and more sure Payment of the Debt, is put in the Right of the Debtor's Goods and Estate, either Moveable or Immovable; which Goods are impignorated to the Creditor, and his Right therein endures till the Debt be paid.

All those sorts of Bonds, are either full and substantial, which have the ordinary Clauses wholly exprest, and are either in a Paper by themselves subsisting in their own Form, and in that respect may be called Simple Bonds, because not join'd with other Writs: Or otherwise, though they be in their full Stile, and at length exprest; Yet they are in the bosom of another Writ, which is the principal one, and gives Denomination to the Paper: Or, Bonds are abridged and shortned, which for the most part are so dealt with, to make the Conveyance to which they are adjected, the shorter; For regularly the Stile of Abridged Bonds, is never used, except in Compound Writs, as in Dispositions, Contracts, &c.

The Essential and peculiar Parts of an Obligation are, The Debtor, the Creditor, the Cause of granting the Obligation, the Subject Matter, the Time and Manner of Performance. For no Bond can be without these.

We shall begin with Bonds for payment of Money; which are for Causes, either O-
nerous

nerous or Gratuitous : Of the first sort, the chief are, Bonds for borrowed Money.

The Form of a Bond for borrowed Money, by one who is Principal without a Cautioner, to another for his own behoof, of the most simple kind, is this.

I A, by these Presents, grant me to have instantly borrowed and receiv'd from B, the Sum of 1000 Pound Scots Money; wherewith I hold me well contented and satisfied, and Exoner and Discharge him and his Successors of the samen, Renouncing all Exceptions that can be proponed or alledg'd in the contrair, for ever. Which Sum, with the ordinary Annualrent thereof, from the date of these Presents, to the Term of Payment under-written, I bind and oblige me, my Heirs and Successors whatsoever, thankfully to Content, Repay, and again deliver to the said B, his Heirs, Executors or Assigneys, betwixt the Date hereof, and the Feast and Term of Whitsunday next to come, in the Year 1715, with a 100 Pound, Money foresaid, of liquidate Expence, in ease of Failie : Together also, with the due and ordinary Annualrent of the said principal Sum, conform to the Acts of Parliament, and Custom of this Kingdom, Yearly, Termly, Monthly, and proportionally, so long as the same shall happen to remain unpaid, after the Term of Payment foresaid : And that these Presents may be Registrated in the Books of Council

Council and Session, or in the Books of any Juridicatory Competent within Scotland, to have the Strength of a Decreet of any of the Judges thereof interponed thereto; that Letters of Horning on six days, and other Execution in form as effects, may pass hereupon. I Constitute _____ my Procurators, &c. In witness whereof I have Signed these Presents (Written on Stamped Paper by C.) at Edinburgh the 7th Day of January 1715 Years, before these Witnesses D. and E.

Sign'd A.

Sign'd D. Witness.

E. Witness.

The Bond may be divided into Four Parts; I. The Receipt of the Money, which is subdivided into 3 Sections. II. The Obligation to re-pay it, which is under-divided into 8 parts. III. The Clause of Registration. And IV. The Subscription, which makes mention of the Writer, Date and Witnesses Names, according whereunto the Bond is Sign'd.

But because this Form may be thought to contain Clauses unnecessary and superfluous, tho' in daily practice, I give a Bond of a more compendious Stile.

I A, oblige me and my Successors, to pay at Whitsunday next, to B. his Heirs or Assignees, the Sum of 1000 Pound Scots of borrowed Money, under the Penalty of 100 Pound; with the ordinary Annualrent of the said principal Sum, from the date hereof, during the not payment. Follows the Clause of Registration and of Subscription, as before.

The Stile of Bonds granted by many Principals, do not much differ from that granted by one: For where the Name of one Principal was expressed, the Names of two are set down, which is in the beginning of the Bond, and in the following parts of it: In place of the Singular *I, Me and Mine*, the Plural *We, Us and Our* are used; only in the Obligatory Part, the Words *Conjunctly and Severally* are adjected, thus, *Which Sum We the said A. and B. bind and oblige Us, conjunctly and severally, Our Heirs and Successors whatsoever, &c.* If these Words *Conjunctly and Severally*, were not added, each Principal by the Laws of Scotland, are only liable *pro rata portione* of the principal Sum, i. e. for his equal share. It is otherways by the *Roman Civil Law*.

The Stile of Bonds granted by a Principal and a Cautioner, do not much differ from the Form above set down, except that

B

the

the Cautioner's Name is only expressed in the Obligatory Part of the Bond, and in that he differs from the Principal, who gives the Receipt of the Money, applied to his own use; whereas a Cautioner has no Benefit, and is only a Surety to the Creditor. Cautioners may be in Bonds granted by one or many Principals, and in the first part of the Bond, *i. e.* the Receipt, the Stile does not differ. When you come to the Obligatory part, the Stile is thus; *Which Sum I as Principal, and B. as Cautioner, Sovereignty and full Debitor for and with me, bind and oblige us, conjunctly and severally, &c.* And so proceeds as if they were both Principals; only before the Clause of Registration, some use to insert an Obligation of Relief, by the Principal to the Cautioner, whereof the Stile shall be given, when we come to speak of Bonds of Relief.

The Difference betwixt Bonds granted by many Principals, and these granted by a Principal and a Cautioner, is, The Cautioner is ay look'd on favourably, seeing no part of the Money was applied to his use, which is otherways presumed, in the Case of many Principals. 2. If he be charged, he has this Reason of Suspension, which is ay presumed, That if the Debt be any time due, he may alledge, that either the Principal Sum, or all the bygone Annualrents, are paid by the Debitor, and will be

be allowed a Diligence for recovering the Discharges. 3. If the Words *Conjunctly and Severally*, be not in the Obligatory Part of the Bond, the Cautioner cannot be Charged till the Principal be Discussed; that is, till the Principal be denounced and registered to the Horn, and his Land Estate adjudged.

If the Bond be granted by one having Right to Lands taillied to him and others, under Provisions irritant, as, *That it should be unlawful to him to contract Debts, whereby the Lands and Estate might be adjudged*; a Clause is adjected, declaring it should be unlawful for the Creditor to Apprise or Adjudge the Estate taillied belonging to the Debitor, for Payment of the Money contain'd in the said Bond: And I have seen another Declaration, *That it should not be Leisum to the Creditor to use any Execution upon the Bond, personally or really, against any other Estate belonging to the Debitor, but allenerly against some Lands that were particularly therein nam'd, with their Pertinents,*

Bonds granted for another, and which oblige not the Signer, but a third Party to whose behoof the Money is borrowed, are rare, and very unsure, and almost never occur, yet for Institution's sake, take the following Examples.

A Bond of borrowed Money by a Tutor in name of his Pupil, might be thus, *I A.*

Tutor Testamentar to B. nominated and appointed by the deceast B. his Father, conform to his Testament of the date ——— By these Presents grant me to have borrowed, and in Name and for the Use and Behoof of the said B. my Pupil, to have received from C. the Sum of 1000 lib. Scots Money, wherewith I hold me well Contented and Satisfied: And in name of my said Pupil Discharge &c. Renouncing &c. Which Sum of 1000 lib. I as Tutor foresaid bind and oblige the said B. his Heirs and Successors thankfully to content &c. in common Form. In witness whereof &c. I have for, and in name of, my said Pupil Sign'd these presents at ———

Bonds by Factors, in name of their Constituent, and Obligations by Over-seers, or *Prepositi negotiis*, &c. binding the Preponents, shall be spoke of in that Title which treats of Compound Bonds; because the Stile of these Writs, contains Narration of others, and have a special Narrative as their Introduction.

If the Creditor would have the Tutor or Factor bound as Cautioners for the Pupil or Constituent, the Stile may be this: *I as Tutor or Factor foresaid, bind and oblige the said B. my Pupil or Constituent as Principal, and my self as Cautioner, &c. conjunctly and severally, and our Heirs &c.*

Bonds which require the Consent of others, are, such as are granted by Minors
with

with consent of their Curators; By Persons interdicted, with Consent of these to whom they are interdicted; By a Wife, with Consent of her Husband, in order to affect her Heritage. These granted by Persons interdicted with Consent, &c. shall be treated in the Title of Compound Bonds, because they have a Narrative. A Bond by a Minor, with Consent of his Curators, may be in this Form. *I A. with Advice and Consent of B, C, and D, my Curators, grant me to have borrowed, &c. wherewith I hold me well content, &c. and with Consent foresaid discharge, &c. renouncing, &c. which Sum I with Advice and Consent of my Curators abovenamed, bind and oblige me, &c. in common Form.*

These sorts of Bonds, as also these granted by a Tutor for his Pupil, or by a Factor for his Constituent, should have an Obligation to move, and cause the Pupil or Minor at Majority, and the Constituent at his returning to the Kingdom, to Ratify and Renew the Bond.

In relation to Bonds granted by Tutors, or Minors with Consent of their Curators, or by Persons interdicted with Consent, &c. The Creditor should know how many of these Consenters make a *Quorum*, if any be, *sine quo non*, and if he be signing: Wherefore it is most fit, that the Nomination be considered by the Writer, who, if he

he will act surely, must not rely on Report of Parties, but look unto, and consider the Nominations: And it were not a-miss, tho' the Bond exprest how many are a *Quorum*.

There is very little Security in Bonds of borrowed Money granted by Pupils, Minors, or Factors, &c. whereby another than the Signer, is intended to be bound: But because of necessity, sometime such Bonds are granted; it is fit to take notice, that no Bond of borrowed Money bindeth Minors, except the Money be profitably imployed by them, or by their Tutors or Curators to their behoof, which the Law calls *in rem versum*: If otherwise, the Bonds are revokable and reduceable *ex capite Minoritatis & Lesionis*. Which danger makes these kind of Bonds to be out of Practice; and here they are only set down for Institution's sake.

Bonds Personal for payment of Money by Married Women *stante Matrimonio*, are Null: For during Marriage, no Wife can validly bind her person, even with her Husbands Consent, or tho' the Bond were judicially ratified, albeit with her Husband's Consent she may dispose of her Estate moveable or immoveable. Hence it is, that if an Heiress Wife should dispoſe Lands or other Things, give Obligation of absolute Warrandice, with Consent of her Husband; tho'

tho' the Disposition be valid, yet the Obligation of Warrandice would be null: For the Case of an Obligement and a Disposition, is not alike; because a Woman is more easily induced to Oblige her self, than to Alienate or Dispose: And when she Gives and Disposes, it is no more than she hath; but she may bind for more than she hath, *in infinitum*. Nevertheless, a Wife, *Matrimonio stante*, may oblige her self to Infeft her Husbands Creditors in Annualrents out of her own Property: And for that effect may grant Obligements to Infeft, and Procuratories of Resignation; which will be so far Valid and Sufficient against her, that Lucrative Deeds done by her, to the prejudice of such Creditors, are reducible *ex capite Doli*, and by the Act of Parliament 1621. The Bonds then, which are validly granted by a Wife, with her Husband's Consent, being Real, *i. e.* having respect to her Estate moveable or immoveable, the Stile of them shall be given, when we speak of such Bonds.

Of Bonds granted by Societies and Incorporations, the chief sort are, these granted by Magistrats of a Burgh, binding the Community; the Stile is in this Form. *We A. Provost of the Burgh of Edinburgh, B, C, D, and E. Baillies, F. Dean of Guild, G. Treasurer of the said Burgh, with the remanent Council, Deacons of Crafts, ordinary and extraordinary, for our selves, as re-*
present-

presenting the whole Body and Community of the said Burgh; Grant us to have borrowed for the use, and in name and behalf of the said Burgh and Community thereof, from H. the Sum of, &c. in communi forma, Which Sum of ——— we the said A. &c. as representing, &c. bind and oblige us and our Successors in Office, thankfully to content, &c. in communi forma, In witness whereof, we have subscribed these presents at &c.

Bonds by an Incorporation of a Trade, are made by the present Deacon and Box-master, by the whole old Deacons and old Box-masters, and by the Masters of the Trade; the Names of all which Persons are mentioned in the Bond that must be sign'd necessarily by the present Deacon and Box-master, and by as many of the other Persons mentioned as he can get; the Stile whereof isthus.

BE it known to all Men, by these present Letters, Us A. Deacon, and B. Boxmaster of the Fleshers of the Canongate, C. D. E. and F. Masters of the said Craft, for our selves, and in name and behalf of, and as representing the whole Members and Brethren of the same: Forasmuch as G. has, at our earnest Desire and Request, advanced, payed, and delivered to us (towards the furnishing and compleating of our new Market-place in the Canongate, in Timber and in Sclait, visiblie tend-

tending to our perpetual Being and Subsistence of our Calling) All and whole the Sum of 2000 Merks Scots Money, wherewith we for our selves and our Successors in the said Craft hold us well contented, Renouncing, &c. Therefore wit ye us to be bound and oblig'd ; Likewise we by these Presents bind and oblige us and our Successors in Place and Office, and the said Craft and whole Members and Brethren thereof, thankfully to content, pay, and again deliver to the said G. his Heirs, Executors or Assignes, the foresaid Sum, &c.

Creditors in Bonds, for the most part, are single Persons acting for themselves, and their own behoofs: The Stile of Bonds granted to such may be gathered from what is said before ; But if the Bonds be for the behoof and in Name of another, as to a Tutor in Name of his Pupil, it is thus, Grant me to have received from A. Tutor to C. for himself, and in name and behalf of his said Pupil, the Sum of, &c. Which Sum I bind me, &c. to pay to the said G. (the Pupil) without taking notice of the Tutor in the Obligatory Part. The same is to be observed in the Case of a Curator ; But, when the Money is lent by a Factor for the behoof of his Constituent, the Bond bears the Receipt of the Money from the Factor, in name and behalf of his Constitu-

ent, and the Obligatory Part makes the Money payable to the Constituent, his Heirs or Assignes, and sometimes is adjected, *Or to the said B. his Factor, or to any other he shall appoint.*

Bonds of borrowed Money granted to Burghs, or Incorporations, or Societies, bear the Receipt of the Money from the Treasurer of the Burgh, or Society, or from the Box-master of the Incorporation, in name and behalf of the Community, &c. And the Money is made payable to the present Treasurer, Box-master, or to his Successor in Office, for the use and behoof of the Community. When there's an Act of the Town Council, or of the Incorporation, &c. Warranting the Treasurer, or Box-master, to lend the Money to that Debitor, it is sometimes narrated in the Bond.

If the Parent lay out Money for the use of his Child, the Clause of Receipt in the Bond is from A. *for himself, and in name and behalf of C. his Son*, and the Obligatory Part is, *to the said A. he being on Life, and failing of him by decease, to the said C. his Heirs or Assignes.*

In like manner, when the Money is destin'd to the behoof of a Wife, the Receipt is from the Husband *for himself, and in name and behalf of B. his Spouse*, and the Payment is, *to the said A. and B. in Conjunct-fie and Liferent, and after their decease, to C. their Son,*

Son, his Heirs, &c. or it is, to the said A. his Heirs or Assignees whatsoever.

In these Bonds for Money lent by a Father, for the use of his Children, or to the behoof of a Wife, this Provision is ordinarily adjected, and is placed before the Clause of Registration: *It is alwise hereby provided and declared, that it shall be lawful to the said A. during his Lifetime, without Consent of the said C. his Son, to uplift, discharge, assign, or otherwise dispose upon the Sum above-mentioned, or any part thereof, any manner of way he shall think fit, and to grant all Writs and Rights necessary relating thereto, as he shall think expedient, and as freely in all respects, as if the said C. his Son were not provided thereto. And further, It is hereby provided and declared, That such Annualrents of the said principal Sum, as shall be resting the time of the decease of the said A. shall pertain and belong to the said C. his Son, and no ways to the said A. his Executors: And of which Annualrents, that shall be so resting, I bind and oblige me, and my foresaids, to make payment to the said C. and his above-specified, at the payment of, and together with the said principal Sum, in case the same be not assign'd, or otherwise dispos'd upon by the said A. in his own time.*

The Clauses of simple Bonds of borrowed Money, in which the Stile varies, are the Clause or Receipt of the Money, which is either instantly receiv'd, or at a Term or

Time before the Date, and is thus exprest, *Grant me to have borrowed and received at Martinmas last bypast, notwithstanding of the Date hereof, the Sum of 1000 Pounds, &c.* When the Money is made to bear Annualrent from a Term or Time long before the Date of the Bond, this Clause is fit to be exprest, *For avoiding the Hazard of Usury,* which is taking more Annualrent, either in Quantity, or with respect to Time, than is really and truly due. In the Obligatory Clause, the Heirs and Successors of the Debitor are sometimes more fully exprest, than is done in the Bond above set down, as thus, *I bind and oblige me and my Heirs, as well Male as of Line, Tailie, Conquest, Provision, and all others my Successors, Executors and Intrometers with my Goods and Gear whatsoever, conjunctly and severally, renouncing the Benefit of the Order of discussing them.* This is to be noticed, when Bonds are granted by Persons, whose Fortunes are Tailied, and is necessary, to prevent the Exception of Discussing, competent in Law, to Heirs of the Second Order. The Heirs and Successors of the Creditor are directly exprest, sometimes the Executors are secluded, and I have seen a Bond of borrowed Money granted to one and his Executors, secluding his Heirs, and sometimes the Bond contains a Tailie and Substitution of Persons, as to a *Man and his Son A. and the Heirs lawfully to be*

be procreated of his Body, which failying to B. and the Heirs lawfully to be procreated of his Body, and so forth, to as many as the Lender pleases, which all failying, to J. his Heirs or Assignees whatsoever, secluding his Executors: And because, by Law, those, who are first in the Institution or Substitution, may uplift and dispose upon the Money, without Consent of those, who are appointed to succeed after them; for preventing which, I have seen this Clause added, *That it should not be lawfull, nor in the power of the Debitor, to pay the Money to the Institute, except upon getting a Discharge signed by the Substitute also, in Taken of his Consent;* Which Clause hath had it's designed Effect. The Terms of Payment are various, for either the Money is payable at one Term, and then it is exprest as in the Example above-mention'd, or it is payable at many Terms thus, *And that betwixt the Date hereof, and the Respective Terms of Payment, in the special proportions and Moyeties under-written, viz. --- Or thus, With the due and ordinary Annualrent thereof, from the Term of Whitsunday 1715, to the Terms of Payment respective under-written, and that in manner and at the Terms following, to wit, 500 Merks thereof at Martinmas next to come, and other 500 Merks at Whitsunday thereafter, and the Sum of 500 Merks, in full and compleat payment of the whole above-written principal Sum, at Martinmas 1716, with*
the

the Sum of 60 Pounds Money fore said of liquidat Expences for each Terms Failie. It is to be observed, That, when the principal Sum is thus divided, and to be pay'd at many several Terms, the Penalty must not be a whole Sum for the principal, but so much for each Moyety, and for each Terms Failie, as in the Example abovewritten.

Every Obligation is imperfect, if a Penalty be not liquidat, and the Penalty is still proportion'd to the principal Sum: The Rule which Writers observe most frequently, is 100 Pounds for each 1000 Merks principal, others guide themselves by the Act of Parliament concerning Adjudications, in allowing the Fifth Part of the Principal; But, in this, there's no certain Rule: For, in greater Sums, the Penalty is lesser than 100 Pounds to a 1000 Merks; And, in petty Sums, the Penalty is made greater than the Fifth Part of the Principal. And generally, respect is had to the Expences of Diligence, which necessarily, must be us'd, for getting payment, if the Debitor Failie, for sometimes the necessary Expende will exceed the Principal, when small.

If the Debitor be owing other Sums besides these in the Bond, it is convenient to adject this Clause, *And it is hereby declared, that the Sums contain'd in this present Bond are over, above, and besides any other Sum due by*

by me to the said A. or for which I stand bound to him: Or thus, That the Sums contain'd in this Bond, are besides the Sums contain'd in a Bond of the date, &c. and in another of the date. &c.

Bonds are granted for the Price of Goods, or Merchant Ware, and the Bond expressly bears it, thus, Grant me to be justly Resting, and Owing to B. the Sum of 500 lib. Scots Money, as the Price of Goods and Merchant Ware, bought from, and delivered by him to me, wherewith I hold my self well contented and satisfied, &c. which Sum I bind and oblige me to pay. Or thus more generally, Grant me to be justly addebted, resting or owing to B. the Sum of 500 Merks, which I bind me to pay, and the rest of the Clauses of the Bond are set down in *Communi Forma*. Thus any case that may occur is exprest, except when it requires a Narration of Circumstances and Causes, and then the Bond is Compound, and a Narrative must be formed, as shall be shewn hereafter.

There are Bonds for Pensions and yearly payment of a certain Sum to continue during pleasure, or otherwise as is agreed, which Bonds are not Gratuitous, seeing they are given for Services done and to be done. The Stile whereof are of this, or the like Form.

I A. considering, that I have nam'd B. to be my Advocat in ordinary, and that he will be at considerable Pains and Trouble in discharging that Trust, I am resolv'd to settle on him the Yearly Sallary underwritten: Therefore I bind and oblige me, my Heirs and Successors to Content satisfie and pay to him, his Heirs or Assigney's, the Sum of : : : : Scots Money yearly, and each Tear during his Lifetime, and serving me as ordinary Advocat, at least ay and while these Presents be discharg'd by me in Writing, beginning the first years payment thereof at Whitsunday next to come, 1715, for the year preceeding, and so furth yearly thereafter during the said space. Registration, &c.

Bonds for payment of Money may have many other Onerous Causes, besides these above set down, but the manner of expressing the same, and of forming a Bond thereupon, may be sufficiently known from these few Examples given.

Bonds for payment of Money proceeding upon a Gratuitous Cause, are, free Gifts and Donations, or Provisions of Children; Donations in an Obligatory Form, bear to be granted for Love and Favour, and out of Kindness, Good-will, or certain Respect, which the Granter has to the other Party, and do not much differ from the Stile of Bonds of Provision. It is to be observed, that because such Deeds of Favour, are not usually, at
sign.

signing, delivered to the Party, it is ~~fit~~
there be a Clause dispensing with not de-
livery.

Bonds of Provision are granted by a Fa-
ther to his Children, or by an Husband to
his Wife, who is not otherways provided
throw want of a Contract of Marriage, or
by an Elder Brother to Younger Brethren
or Sisters not provided by the Father.
Bonds of Provision by a Father to a Child
may be considered, as, in some part, Gra-
tuitous, in some part not, for if the Fa-
ther was not by Contract of Marriage bound
to provide his Children in a certain Sum,
then the Bond of Provision, having no o-
ther Cause, than Paternal Dutie, proceeds
on meer Fatherly Care and Natural Af-
fection, and is so exprest: But if he was
bound, then that Clause in the Contract of
Marriage is previously Narrated, and an
Induction or Subsumption is made thereup-
on, as will appear from the Examples which
shall be given, when we treat of Compound
Bonds.

The Stile of a simple Bond of Provision
is thus, *I A. for the Paternal Love, and Fa-
therly Affection I bear to B. my lawful Son,
and for his Portion, bind and oblige me, and my
Heirs, as well Male, &c. to make due and
thankful payment to the said B. and to the
Heirs lawfully to be gotten of his Body, or to
his Assignies, which failing, to return to me and*

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my

my Heirs whatsoever, of the Sum of 6000 Merks Scots Money, and that at the first Whitsunday or Martinmas next, or immediately following my Decease, when the same shall happen at the pleasure of GOD, with the Sum of 600 lib. Money foresaid of liquidat Expenses in case of failzie, and with the ordinary Annualrent of the said principal Sum, conform to the Acts of Parliament, Yearly, Termly, Monthly, and Proportionally, so long as the same shall happen to remain unpaid, after the Term of payment foresaid.

In Bonds of Provision the following Obligation is frequently insert, And further, I bind and oblige me and my foresaids, upon my own Expense, to entertain, Educate, Alimant and Furnish the said B. with all things necessary, until the Term abovementioned, appointed for payment of his Portion, and for the space of six Months thereafter: And if the Bond be to a Child of a Nobleman or Ancient Baron, the Clause to furnish Necessaries must have thereto adjected, according to their Birth and Quality.

It is necessary likeways to adject this Declaration, And it is hereby declared, that this Bond of Provision is in full Contentation and Satisfaction to the said B: my Son, of all Bairns Part of Gear, Portion Natural, Executory, Legacies, former Provisions, or any other thing whatsoever that he can Ask, Claim or Crave by & through my Decease, when the same shall happen
at

at the pleasure of God. And in some Cases may be added, Or his Mothers Decease, or his Mothers Contract of Marriage, or any other manner of way, except allennarly what I shall be further pleased to bestow upon, and provide to, him at any time during my Life; And likewise this Clause is enlarged with this Addition, It is always hereby declared, that in case I shall assign to the said B. any Bond or Bonds containing as much of principal Sum as in this Bond of Provision; then, and in that case, the said B. shall be obliged to accept the same, and this Bond of Provision shall become void and null from thence furth, and for ever. Upon which express Provision this Bond is granted and accepted, and no otherwise.

Sometimes 'tis necessary to adject the following Reservation, and Declaration, Reserving nevertheless full Power to me at any time of my Life, vel in ipso articulo Mortis, to Revoke, Alter, or Innovat this Bond, and to declare the same Null, and to Augment or Diminish this Portion, if I shall think fit, and that by a Declaration to be subscribed with my hand, which shall be sufficient for that Effect; but in case I shall not alter the same, then I declare this to be a valid Evident in favours of him and his foresaids, albeit it be lying in my own Custody, or in the keeping of any Person, undelivered to him the time of my Decease, notwithstanding of whatsoever Act, Law or Practique made, or to be made in the contrary, wherewith

*I for me and my Heirs by these presents dis-
pence.*

When the Bond of Provision is made by a Father, in favours of his whole Children, the Stile is thus. *I A. for the Paternal Love and Fatherly Affection that I have and bear to B. C. &c. my lawful Children, by these Presents, under the Provisions and Conditions after-specified, bind and oblige me, my Heirs, Successors and Executors whatsoever, to make good and thankful payment to my said Children of the several Provisions underwritten, viz. To the said B. the Sum of ——— Scots Money: To the said C. the Sum of ——— Money foresaid, and that immediatly after they shall attain to the respective Ages of 14 Tears compleat, together with 10 Merks for each 100 Merks of their principal Sums of liquidat Expenses, in case of failie, by and attour their respective Provisions, together also with the ordinary Annualrent of their said Portion, from the first Term of Martinmas or Candlemas, Whitsunday or Lambmas, immediatly after my deccase, whether the same happen after or before their attaining to their said respective Ages of 14 Tears compleat: Providing always, likeas it's hereby expressly provided and declar'd, That, if any of my said Children shall depart this Life before their Marriage, and also before their Majority, in that Case, the Portion of the Child so Deceasing, shall fall, accresce and belong to the Two Surviving Children equally*

equally betwixt them; And, if either of the Two Survivers Decease before their Marriage or Majority, in that Case, the Provision of the Child who deceases, with the Addition of what fell by the deceasing of the other, shall fall, accresce and belong to the Heir, and last Surviving Child, equally betwixt them. And it is further provided and declared, That it shall not be Leisum to my said Children, to frustrat the foresaid Condition and Destination, by disposing or assigning their said respective Portion to any person before their Marriage, and during their Minority, without prejudice to them, after their respective Marriages, or after the elapsing of their Minority, to Assign and Dispose upon their Portions, as they shall think fit. And if the Granter be a Nobleman or Gentleman of an opulent Fortune, or if his Estate be Tailzied, the Bond of Provision may bear, That the Portion should in the last place return to himself and his Heirs Male, and of Tailzie, succeeding to him in his Dignity and Estate.

When a Bond contains the Portions and Provisions of many Children, with such Conditions and Destinations as these above-mention'd, the Father is in use to sign several Copies of that Bond, in which this Clause may be insert, And to the effect every one of my said Children may have an Authentick Double of this present Bond of Provision, I have likewise Subscribed two other Doubles

bles of these presents, of the same Date, Tenor and Contents, any one of which three Bonds being fulfill'd, the other two are to be void, as being for the said Cause and Sums.

The Terms of payment of Provisions to Children, are either at any year within their Majority, as 12, 14, 16, 18, 20, or 21, or at the first *Whitsunday* or *Martinmas* after the Fathers decease, as the Party shall condescend.

The manner of dividing the Sums provided among many Children, is as Arbitrary; for either every Child is provided to a certain Sum, and then there's no necessity of a Clause of Division; or else the Father provides a large Sum in general to all his Children nam'd in the Bond; or sometimes he makes Provision for the Children to be procreated, as well as the Children already procreat, and named in both, in which Cases the following Clause of Division may serve, with a small Alteration, and may be thus exprest, *If there be two, three, or many Sons or Daughters Procreated, or to be Procreat betwixt the Father, and the Mother, In that case the Father declares, That the said Sum of ——— is to be divided amongst them as he shall think fit, and shall order, in his own time, and to be payed at such Terms as he shall be pleased to appoint; and failing of any such Division, in that case, the Sum is to be divided by two of the nearest of Kin on the Fathers side, and two of*

of the nearest in Kin on the Mother's side: And if there be no such Division; in that case the Sum of ——— thereof is to belong to the Eld-est; and the remainder to be equally divided amongst the other Children, and to be payable, (if he shall appoint no Term in his own Lifetime) at the Whitsunday or Martinmas next, and immediatly following his decease, when the same shall happen at the pleasure of GOD.

The Sums in Bonds of Provision seldom bear annualrent, till after the Term of payment.

In Bonds of Provision the Penalty is not always specified, as in common Bonds; for when the Sum is blank, as it sometimes happens to be, that the Father at any time he pleases may fill it up; it is not usual to leave a blank for the Penalty too, but the Penalty in these cases being for the most part Ten for each Hundred, Writers use this general Clause, *with 100 for each 1000 Merks of the said principal Sum of liquidat Expenses in case of failie.*

Provisions to Wives, not otherways provided by an ordinary Contract sign'd before Solemnization of the Marriage, are made by granting Writs in Form of a Contract between Man and Wife, as shall be treated in the Stile of Contracts.

Bonds of Provision, by a Brother to a Sister have for their Cause, *The Love and Fa-*

your the Granter bears to his Brother or Sister and for his or her better Provision, binds and obliges himself to pay ——— in the same way as if it were granted by the Father.

Of Bills of Exchange.

Money is also got and gifted by Legacy and in Testament, which is an Original Constitution of a Debt, and by which the Executor becomes bound to the Legators for payment of what is bequeathed; and so in this place one might expect to find something concerning Testaments, but because they are not formal Obligations, and may be considered as Conveyances and Deeds of Alienations, it is thought fit to refer giving the Stile of Testaments, till we Treat of Conveyances.

Money is due, and a Debt may be constituted, by Bills of Exchange as well as by Bonds, and of late the use of such Bills is become frequent, which makes it very convenient to give a short Advice concerning Bills of Exchange, their several Forms and Manner of proceeding. And first, Bills are either *Out-land*, and then, they are drawn by, or upon, Persons living in a Foreign Country, and the Money payable in Species Foreign. Or, *In-land*, when drawn by,

or

or upon Persons living within North Britain or Scotland, and payable in the current Money thereof.

As to the Persons imployed about Bills, four are ordinarily requisite, two at the place where the Money is taken up, and two where it is payable. 1. The Deliverer or Giver of the Money. 2. The Taker or Receiver of the Money, and who on that account draws the Bill, and is called the Drawer. 3. He (who is to repay the Money) upon whom the Bill is drawn, and to whom it is directed. And 4. The Party to whom the Money is payable, and to whom the Bill is sent.

But sometimes only three persons are needful, as when the Deliverer of the Money takes the Money payable to himself.

Yea, Money may be done by Exchange between two Persons, as when the Drawer makes the Bill payable to himself or Order, and directs it to the party that owes him Money, and is to pay it by Exchange; which Method is very convenient, for it constitutes the Debt, and makes way for speedy Diligence.

There are two Copies given for the same Sum, when the Bill is Out land, lest one which is sent by the Post should miscarry, the other is kept by the Deliverer of the Money and Bills. especially Foreign

are drawn either at Usance, at days sight, or at a certain time after Date.

By Usance Merchants understand the space of a Month after the date of the Bill, *i. e.* the same day of the next Month following, in which the Bill is dated, as a Bill drawn 10 *June*, payable at Usance must be Answered on the 10 of *July*, And there is double Usance, *i. e.* two Months; Triple Usance, *i. e.* three Months; And half Usance, *i. e.* 15 days. The Trading Towns of *Europe* having different Usances, some have simple Usance, as from *Edinburgh* to *Amsterdam*; others have double Usance, as to *Venice*, &c. and this serves to compute the current Price of Exchange from one place to another, not that Bills on these Places may not be payed sooner than 1, 2, or 3 Months; for they may be paid at certain days sight, as Parties agree.

A Bill payable at so many days sight, is to be accounted so many days next after the Bill shall be accepted, and not from the date of the Bill, nor from the day the same came privately to hand, or was privately exhibited to the Party on whom it was Drawn, if he did not accept thereof, for the sight must appear in a legal way, *i. e.* by Acceptation or Protest.

Bills payable at a certain time after their date, are much in affinity with these payable at Usance.

The

The several Forms of Bills of Exchange.

Laus Deo. In Edinburgh this 27 June
1715 for 100 lib. Sterling.

At six days sight pay this my first Bill of Exchange to A. or his Order, One Hundred Pound Sterling, for the value here received of B. Make good payment, and put it to Accompt, as per Advice from

Your &c.

To D. Merchant
in London.

C.

The second Bill is the same with the first, only with this Alteration and Addition,

At six days sight pay this my second Bill of Exchange (my first not being paid) to A. Or thus.

At six days sight, not having my first, pay this my second Bill of Exchange to---

If he who signs the Bill is to make himself Debitor, he writteth in the Bill, *And put it to my Accompt:* But if he to whom it is directed is Debitor to the Drawer, then he writs, *And put it to your Accompt:* Or he says, *Value in your own hands.* Also it is sometime expressed, *And put it to the Accompt of such an one:* But Value in Law is presum'd to have been giv'n by the Possessor of

a Bill, tho' neither the Bill it self, nor Indorsation thereof, bear, value to have been receiv'd, unless it be proven by the writing or Oath of the Possessor, that Value was not giv'n.

If the Bill is to be Assign'd or Indors'd to another, the Assignment must be writ on the back of the Bill thus,

Pay the Contents on the other side to E. or Order, Value of F. and he signs A.

But if E. do likewise transfer the Bill, he writes only thus, *Pay the Contents hereof to F. and he signs E.*

Tho' Indorsations may be sign'd blank for the name of the Possessor, yet the Act 25 Parl. 1696. Discharging Writs blank for the Receiver's Name, is extended to Bills of Exchange, so that a Bill Drawn and remaining blank in the name of the Person to whom the Money is made payable, will be Null. Tho' this blank may *ex post facto* be filled up, in presence of the Drawer.

If the Bill be transacted among three Persons, it bears, *Pay to A. the Sum---value of himself received.*

If a Bill be to be payed to a Trustee, or Factor, and payment be made for the behoof of the Drawer, it should be thus, *Pay to A. for my behoof the Sum of---*

Bills drawn in this Form and accepted, upon Non-payment in the due time, must be protested against the Acceptor, either per-

personally, or at his Dwelling House, which gives trouble to the Haver of the Bill, to seek out the Acceptor, or to go to his Dwelling House with Nottar and Witnesses, to prevent which Trouble, the Bill may be written thus,

Upon the first of July, pay to A. or his Order, at his Dwelling-house in the Laun-Mercat in Edinburgh, the Sum of---- like value you are resting to me, with Interest after the Term of Payment. Make thankful payment, and you will oblige yours, &c. And thus Interest and Annualrent may be made due by Bills of Exchange, as well as by Bonds: For tho' the Act of Parliament in the year 1681. Statutes, that Sums due by Bill shall bear Annualrent, in the Case of Non-Acceptance from the date of the Bill, and in the Case of None-payment, that Annualrent is due from the time the Sums fall due; Yet that holds only when a Bill is duely Protested for Non-Acceptance, or for Non-payment.

The Form of Bills drawn payable to the Bank is thus,

Edinburgh.—

*Sixty days after the date hereof, pay to—
or Order, at the Bank-Office in Bank-Money,
the Sum of 25 Pounds Sterling Value received.*

If it be Negotiated betwixt two only, then it is in this Form,

Pay

Pay to me, or my Order, the Sum of --- due by you to me, or --- Value in your Hands, and the like.

The Sum in Bills of Exchange is twice exprest, once in Figures in the Top of the Bill, or at the Side or Foot thereof, and in the body in Letters; If these two should disagree, what is fully exprest in Letters, and in the bosom of the Bill is the Rule of Payment.

No Bill where the Name of the Person to whom it is payable, is mended or interlin'd, ought to be accepted or regarded,

The Direction and Acceptance of Bills is usually written in the In-side of the Bill: The Direction is given before, and the Acceptance is thus, *Lond. 27. June 1715. Accepts:* And then he signs.

Now the Person, to whom the Bill is paid, is ordinarily design'd, that it may be known who he is, and also he, on whom it is drawn, but the Drawer is not so, for which end, of late, especially in In-land Bills, the Drawer subjoins to his Subscription thus, *[A. Merchant in Edinburgh: Or rather thus, Pay to me A. Merchant in Edinburgh, or to my Order, &c.]*

When the Bills are for the Use of Gentlemen travelling through Foreign Countries, it is most expedient, to have the Species of the best and most current Money exprest in the Bill, which indeed will occasion one and an half, or two, and more per Cent. Difference in the Exchange: And in Foreign
Parts

Parts, especially in *Germany* or *Italy*, where, through the Multiplicity of petty Sovereignities, their *Species* of Money is very different, one sort is more universal than another, and a Traveller should have his Money payable in such *Species*.

It is most inconvenient, to have Bills payable to the Bearer; For, if such do miscarry, and come to a wrong Man's Hand, he may receive the Money, and he who paid will produce the Bill it self for his Warrant to pay it to whosoever shall bring it, and thereby the true Owner loses his Money.

Sometimes Foreign Bills carry to be Drawn *per Advice*, sometime they bear *without further Advice*; Which last is more convenient for the Haver of the Bill: For, in the other Case, the Party on whom the Bill is drawn, ought not to accept, till the Letter of Advice comes to his Hand, which may retard the payment, and disappoint the Haver of the Bill.

Bills of Exchange, either In-land or Out-land, are not regulated by the Common Law, but by the Law of Merchants: And therefore they need no Witnesses to the Subscription of the Parties; For it supposes that these, who deal in Exchange, are Men of Honesty and Credit, and will truly, and of their own accord, acknowledge their Subscription; But, if it should otherways happen, it might be easily provided against
by

by their Letters, in comparing the one with the other, and by the Consequences of the Draughts and Books of Accompts, and by diverse other Circumstances. But this doth seldom occur.

When ever the Bill comes to Hand, the same should be presented, and an Acceptance demanded, or Protest taken for not Acceptance; For no days are, by the Law, allow'd Merchants, herein to deliberate: However in Discretion, a small time, as 24 Hours at most, ought not to be deny'd, if sought.

If a Bill be directed to two or more Persons in this manner, *To A. and B.* they must both Accept; And if any one refuse, the Bill must be protested for want of due Acceptance: But if it be directed thus, *To A. or, in his Absence, to B. or to A. and B. or to either of them,* the Acceptance by any one of them is sufficient, and the Bill cannot be protested for want of due Acceptance.

Verbal Acceptance is binding, and probable by Witnesses; So that the Haver of the Bill, upon Non-payment, may protest and raise Action against the Verbal Acceptor, which will be effectual.

If the Party accept the Bill only for part of the Money, the Haver may take it; But he should nevertheless protest for Non-acceptance for the whole, and immediatly send Advice to his Friend and Correspondent:

dent: And, at the Term of Payment, he may receive that part, but should again protest for Non-payment of the whole, and give Advice accordingly.

Protest for Non-payment ought to be made upon the third day after the Bill falls due, and Advice thereof sent the first Post to the Drawer, or to the Correspondent of the Haver of the Bill; and some use, in certain Cases, to protest within two days, The day on which the Bill falls due, is part of the time limited in the Bill, and these days of *Grace*, as they are called, are compted next after the Expiration of that day, and are allowed, as well for him to whom it is payable, to procure payment, as for him, on whom the Bill is drawn to pay it. *Sundays* and *Holy-days* are counted in the Number.

Tho' this Caution has not been observed, yet it is convenient to make Protest for Non-payment; even five, six, or more days, after the time limited in the Bill.

If, betwixt Acceptance and Payment, the Acceptor fail in his Credit, Demand must be made by a Nottar for better Security: And, in default thereof, Protest for better Security, whereof Advice must be sent to the Correspondent.

A Bill should not be pay'd before it become due, lest a Countermand might be sent by the Drawer to the Acceptor, who

may lose the Money, if, before the time in the Bill, the Drawer send contrary Advice, because the Money stipulated to be payed for the Bill, is not delivered to him, or the like.

Of Bonds *ad facta prestanda* Simple.

The second sort of Bonds, are these granted for performance of certain Deeds, which are various, and cannot well be clas- sed; Nor is there any fixt Stile used, but the same are formed according to the Paction and Circumstance of the Parties, or of the Deed to be done: However, they may be divided into Bonds Principal and Acces- sory, or Bonds of Cautionry. I shall set down the Stile of Simple Bonds of this kind, which more frequently occur, and may serve for a Rule and Directory in other Circumstances and Cases.

Of Bonds Principal, take the following Example: A Bond to dispoſe Lands for a Sum of Money instantly receiv'd, is thus, I
A. grant me to have received from B. the Sum of 1000 Pound Scots Money, for which I bind and oblige me, my Heirs and Successors, to dispoſe to him, or any person he shall nominat, the Lands and Estate which belonged to C, and which fell in his Majesty's Hands by his Forfeiture, and whereunto I have Right by a Gift granted to me of the date, &c. And to assign to the said B. the same Gift, in so far as it

it may be extended to the Estate real or personal, which belonged to the said C. and to grant all Writs, that may be needful for denuding me, and establishing the Right thereof in the Person of him, or any he shall appoint, as said is, with Warrantice from our proper Fact and Deed allenarly: And, in the mean time, I grant power to the said B. or any he shall think fit to intrust, to intromet with, & uplift the whole Rents, Profits and Duties of the foresaid Estate, as well bygone resting unpay'd, as in time coming, to be dispos'd upon by him at his pleasure, without being comptable to me, or any others, for the same: Providing always, that the said B. upon my granting the foresaid Right to him, be holden and obliged to make payment to me of ——— more, making up in whole, with what I have now received the Sum of ——— Scots Money, which I have condescended to accept for the Right of the said Forfeiture at his Request. Registration. Horning on six Days.

Of Bonds Accessory, and of Cautionry.

The Stile of Bonds Accessory or Cautionary for performance of Deeds, may be known from the following Examples. As 1. A Bond of Cautionry in loosing an Arrestment, is thus, ——— I A. bind & oblige me, my Heirs and Executors as Cautioner and Soverty acted in the Books of Council and Session, for B. that his whole Goods, Gear, Corns, Cattel, Insight Plenishing, Sums of Money,
F 2 Debts

Debts, Horse, Wolt, Sheep, Mails, Farms, Profits and Duties of Lands, and others whatsoever pertaining to him, and arrested at the Instance of C. shall be furthcoming to the said C. as Law will.

2. A Bond of Cautionry in a Suspension, when for Reasons of Multiple Poinding, is thus, I A. by the Tenor hereof, bind and oblige me, my Heirs, Successors, and Executors, as Cautioner, Soverty, and full Debitor acted in the Books of Council and Session, for B. That he shall make payment to C. or D. or E. or F. or to any of them who shall be found by the Lords of Council and Session to have best Right to the Sums under-written, of the Sum of _____ Scots of Principal, with the Annualrents thereof, and _____ of liquidat Expenses, contained in a Bond granted by the said B. to the deceast G. and to which the whole fore-named Persons pretend Right, in case it should be found by the said Lords, that he ought so to do after the discussing of the Suspension, to be raised by him in the said Matter. When it is in a simple Suspension, it is in this Stile, _____ That he shall make payment to C. of the Sum of _____ (as in the Charge) contained in a Bond alledged made and granted by the said B. as Principal, and D. as Cautioner for him, Conjunctly and Severally to E. of the date _____ Registrat _____ and in an Assignation made to the said C. dated &c. in case it shall be found, &c.

And

When the Suspender is Denounced and Registred to the Horn, and if the Letters of Suspension contain a Warrant for Relaxation, the Bond of Cautionry must have this Clause, ——— And likewise that the said ——— shall make payment to His Majesty's Treasurer of the Sum of 10 Merks Scots Money, in name of Composition, for the Escheat of his Goods and Moveables, falling in H. M. hands through being of the said ——— lawfully Denounced to the Horn, and Registred for the Causes foresaid.

When the Condition of the Cautioner is doubtful or unknown to the Clerk of the Bills; A Person more responsal and unexceptionable, must Attest and Declare him to be sufficient; And the Clerks are Ordained to take from the Attester as Cautioner for the first Cautioner, a Bond, that he may be lyable subsidiary, as fully as the first Cautioner, the which Cautionary Attestation written upon the back of the other Bond of Cautionry, is of this Tenor.

I A. ——— not only attest the Sufficiency of the within named and designed Cautioner, And bind and oblige me, my Heirs and Executors therefore: But also become Cautioner for him; And bind and oblige me and my fore-saids, for the Sums of Money within contained, as fully in all respects, as the Cautioner himself; except as to the order of Discussing, And I consent that these Presents be Registred, with the
with—

within written Bond, that Execution may pass subsidiary hereon accordingly, and to that effect, constitutes the Procurator within designed; In witness whereof, &c.

3. A Bond of Cautionry in a Suspension of Lawborrows, is in this Form, I A. bind and oblige me, &c. as Cautioner for B. and C. Persons Complained upon, that E. &c. and their Bairns, Tenants and Servants shall be harmless and skaithless of the said B. and remanent Persons complained upon, in their Bodies, Lands, Heretages, Tenements, Annualrents, Liferents, Tacks, Steedings, Rooms, Possessions, and shall noways be troubled, by them therein, nor by no others of their sending, hounding out, Reset and Assistance, and Ratihabition, nor by none whom they may stop or lett, otherwise than by order of Law, and Justice in time coming, and that under the Pains following, viz: each Nobleman and Noblewoman under the pain of 2000 Merks, other Landed Men under the pain of 1000 Merks, and each Unlanded Person under the pain of 400 Merks, and that for obedience of the Charge of Lawborrows given to the foresaid Persons, for whom I am Cautioner, in case it shall be found by the Lords of Council and Session, that they ought so to do, after the discussing of a Suspension, to be obtain'd in the said Matter.

4. A. Bond of Cautionry for keeping of the Peace, is thus, I A. by the Tenor hereof, bind and oblige me, &c. as Cautioner for B.
that

that he shall keep His Majesty's Peace during this Current Parliament, and in all time coming; and also that C. shall be Harmless and Skaithless in his Person and Goods, Good Name and Gear, and noways troubled by him, nor no others of his Causing, Sending, Hounding out, Commanding, Reset, Assistance, or Ratihabition, whom he may stop or lett, directly or indirectly, during the foresaid space, under the pain of to be payed to the said Clerk of the Court of Constabulary, for the Use and Behoof of the Lord high Constable of Scotland, and his Deputies.

5. A Bond of Compearance before a Court, is in this Form, I A. by the Tenor hereof, bind and oblige me, &c. as Cautioner for B. that he shall compear before in a Court to be holden by him within ——— upon betwixt 2 and 3 in the Afternoon, there to underly the Law for the Crimes Lybell'd, under the Penalty of &c. as in the Bond for keeping the Peace: And if the Bond for keeping the Peace be ingrossed after, then say, And that the said shall be Harmless and Skaithless, &c. It is to be Noted, That when these two Bonds are ingrossed, there's but one Penalty in the Bond.

There are other Obligations for Performance of Deeds, which not being ordinarily in a writ a part are adjected to other Bonds as an Obligement, commonly called a Clause of Relief, adjected to a Bond for bor-

borrowed Money granted by a Cautioner, and a Principal, and an Obligation to grant an Heretable Bond of borrowed Money, or the like; for there is no simple Bond whatsoever, which, according to Circumstances, may not be adjected to other Writs.

A Clause of Relief which is Subjoined and Incorporated with other Writs granted by Principal and Cautioners, is thus
 ——— *Likeas, I the said A. bind and oblige me and my foresaids, to Warrant, Free, Relieve, and Skaitbless keep the said C. D. and E. of the Cautionry above-written, and of all Coast, Skaith and Damage, Expenses and Interest, that they or either of them, or their foresaids, shall happen to sustain or incur there-through in any sort: And we the saids Cautioners, bind and oblige us hinc inde, to others and our foresaids, to Warrant, and equally to Relieve others of the Premisses, and of what Damage, Interest and Expenses shall be sustained thereby, each of us for our own parts pro rata, This mutual Relief is only subjoined where there are two or moe Cautioners.*

An Obligement to grant an Heretable Security adjected to a simple Bond of borrowed Money, is in this Form, *And for further Security thereanent, I bind and oblige me, and my foresaids, to Grant, Subscribe, and Deliver to the said B. whensoever I shall be desir'd, a valid and sufficient Heretable Security*
 ty

ty for the said Debr, out of all or any part of my Lands and Estate within this Kingdom, where ever the same ly, and that either by granting a Wadset, or an Infestment of Annualrent, as he shall think fit, to be holden either of me and my Heirs, or from me of my immediat Superiors, Blench or Fue, as may best subsist with the Laws of this Kingdom, and with all necessary and usual Clauses that any Lawyer to be Nam'd by the said B. shall think just and reasonable, and to cause extend the foresaid Security, and give Seasin thereupon, or expedite an Infestment by Resignation or Confirmation, as he shall think fit, and all upon my own Proper Charges and Expenses, without prejudice always of the personal Obligement abovementioned, or suiting Execution thereupon at the Term of payment abovementioned, or at any time thereafter without Requisition.

The Form and Stile of other Bonds, as well for payment of Money, as for performance of Deeds, are set down in the Section which treats of Compound Bonds.

Of Discharges and Acquittances, simple.

HAVING treated of Obligations simple, occasion offers to explain the Conveyances and Assignations of the things in the Obligation, but before we treat of those. It is proper to give the Stile of Discharges granted by the Creditor.

A Discharge is an Acquittance in writing of a Sum of Money, or other Duty, which ought to be paid or done, as, if one be bound to pay Money due by a written Obligation or otherways, the Creditor upon Receipt thereof, or upon other Agreement signs a Writing, in Discharge thereof, testifying that he is paid or otherways satisfied, and therefore doth Acquite and Discharge him of the same, which Discharge wholly extinguishes the Obligation or ground of Debt.

This Word differs from *Acceptilation* in the Civil Law, or *Apocha*, because *Acceptilation* may be by, and without, Writing, and is nothing but a feigned Payment and Discharge, tho' no Payment be made, and *Apocha* is a writing witnessing the Payment, which nevertheless Dischargeth not unless Money be truly delivered.

He to whom the Obligation is granted, or others having his Right, or Power, can grant Discharge, as the Creditor's Heir, Executor, Assigney, Factor, Tutor and Curator.

Not only the Debitor, or those who represent him, and are lyable in payment of his Debts, or others to whom the management of the Debtors Affairs are committed, such are the Debtors, Heir, Executor, Successor in his Estate, Disposed with the burden of Debts, Factors, Tutors and Curators, but also

also Strangers who have no manner of Relation to the Debitor, can procure a Discharge of a Debt, or Obligation, which will be equally stedable and valid.

There's no great variety in the Stile of Discharges, occasioned through the diversity of Obligations, or the subject Matter contained in the Bond, because it is narrated, and the discharging or acquitting Words, are applied to the Bond and Words therein, or to the Species of the Obligation, which may arise *ex facto*.

Discharges are either of the Annualrent alone, or of the Annualrent and principal Sum, and of the whole Obligation.

A Discharge of Annualrent is in this Form, *I A. grant me to have received from B. the Sum of 60 lib. Scots Money, as the due and ordinary Annualrent from Whitsunday 1714, to Martinmas last bypast 1714, of the Principal Sum of 1000 lib. Money foresaid, contain'd in, and due by a Bond granted by him to me, of the date----Therefore, I by these presents, Exoner, quite Claim, and simply Discharge the said B. his Heirs and Successors whatsoever, of the Annualrents of the foresaid Principal Sum due at, and preceeding the said Term of Whitsunday last bypast, and obliging me, my Heirs and Executors to Warrant this Discharge at all hands, and against all deadly, as Law will. And I consent to the Registration hereof, &c.*

This Stile is the same with a little Variation when moe Annualrents are pay'd, for instead of half an Years Annualrent, say 2, 3, or 4 years, from *Whitsunday to Whitsunday*, or indefinitely, as the Annualrent from *Whitsunday 1689, to Whitsunday 1695, &c.*

If Retention is to be allowed, then say, *As a Years Annualrent* (after deducing Retention) *from Whitsunday 1714, to Whitsunday 1715, &c.*

When the whole Bond is satisfied, the Money is either paid by the Principal, in which case, if the Bond has not been Registred, and Diligence done thereupon, he either retires the Bond simply, and cancels it, without taking any Discharge from the Creditor, or, which is safest, he takes a Receipt on the back thus, *I the within named A. Grant and Acknowledge, that I have received from the within designed B. full and compleat payment of the principal, Annualrents and liquidat Expences, due by vertue of this within written Bond; Therefore I Discharge the same, and whole contents thereof, or thus, Therefore I Discharge the said B. and his Successors, of the within Sums and Bond, and whole Contents thereof, for ever. In witness whereof, &c.*

If the Bond be Registred, and Horning Executed thereupon, the Discharge is on a writing a part, thus, *I A. Grant me to have received from B. full and compleat payment of*
the

the principal Sum of 1000 lib. Scots Money, and of the Annualrents due from Whitsunday 1714 to Whitsunday 1715. of the said Principal, contain'd in, and due by his Bond granted to me, Dated &c. Registred in the Books of Council and Session, &c. Therefore, I by these presents Exoner him, and his Successors whatsoever, of the foresaid principal Sum, and Annualrents thereof, due at, and preceeding the date hereof, and of 200 lib. of liquidat Expences, contain'd in, and due by the Bond abovespecified, together with the foresaid Bond it self, Letters of Horning raised thereon. and Executions thereof, with all that has followed, or can follow thereon: Which Discharge, I oblige me and my Heirs whatsoever, to warrand to the said B, to be to him and his foresaids, a sufficient Exoneration of the Premisses at all hands, and against all deadly, LIKEAS, I have instantly delivered to him the Extract of the foresaid Bond, with the Letters of Horning raised thereupon, to be cancelled and destroyed at pleasure.

Upon producing this Discharge at the Register, before the Bond be Recorded in a Book, at least within six Months after date of the Extract, and upon paying of a small gratuity to the Servant of the Office, the principal Bond is got up, of which Receit, (mentioning the Discharge) is given, and all the Extracts, one ore moe, which must be given back, are Cancelled.

When

When the Debtor is denounced, he must be Relaxed, the Clause to be inserted in the Discharge, for obtaining Relaxation, without Caution on Consignation, is to be found below among the Clauses adjected to compound Discharges.

If real Diligence, has been raised on the Bond, or if the Debt be paid by the Cautioner, the Discharge is in a writing apart, and is a compound security, which shall be treated of hereafter.

Discharges, either of Principal or Annualrents, may not only be granted by the Creditor himself, but also by his Factor, who has either a general Mandat and Commission, or a special one : All which might be treated of here, did not my designed method oblige me to refer to another place the treating of Factories, and Commissions, which I look on as Compound Writs ; But because there are some Commissions called Procuratories and Precepts, which are adjected to, and are parts of Compound Writs, it is convenient to give the Stile of such, especially in this place, because they are Writs which are never found alone and by themselves, but are always adjected to Compound Writs. These which we shall take notice of, are Procuratories of Resignation *in favorem* and *ad remanentiam*, Procuratory to serve Heir and Procuratory of Resignation conjoin'd. And, *Lastly*, Precepts

cepts of Warning and of Seisin : Of which
in order.

Of Procuratories of Resignation.

A Procuratory of Resignation *in favorem* adjected to a Disposition is thus, *And, for effectuating the foresaid Infeftment by Resignation, I, by these Presents, make and constitute —, and each of them, conjunctly and severally, my very lawful and irrevocable Procurators for me, and in my Name, to Resign, Surrender, Over-give and Deliver : Likeas I, by these Presents, Resign, Surrender, Over-give and Deliver, all and whole (here the Lands are Repeated) lying as said is, together with all Right, Title, Interest Claim of Right, Property and Possession, Petitor and Possessor, that I, my Heirs and Successors had, have, or any ways may claim or pretend thereto, or to any part thereof in time coming, In the Hands of my Immediat Superior, or Superiors of the same, presently being, or that shall happen to be for the time, or of his or their Commissioners, having power to receive Resignations in his or their Names, In Favours, and for new Infeftment of the same, to be made and granted to the said B. his Heirs or Assignes whatsoever, heretably and irredeemably, as said is ; And thereupon Acts, Instruments and Documents needful, to ask, list and raise, and generally, all and sundry other things concerning the*
Pre-

Premises, to do, use and exercise, which, to the Office of Procuratory in such Cases, by the Law and Custom of Scotland, is known to appertain, and which I might do my self, if I were personally present, promising to hold firm and stable all and whatsoever things that my said Procurators, or any of them in the Premises lawfully does, or causes to be done, without Revocation.

When a Disposition of Lands is made by an apparent Heir, who is not infest, there is adjected to the Right, a Procuratory for Serving the Disposer Heir to his Predecessors, and for Resigning, thus,— And because I am not as yet Infest and Seased, as Heir to the said deceased D. my Brother, in the Lands, Barony, and others above disposed: Therefore, and also for making of the Resignations after mentioned, I, by these Presents, make and constitute---, and each of them, jointly and severally, for me, and in my Name, to purchase and procure Brieves furth of our Sovereign Lord's Chancellary, for procuring me to be duly and lawfully Retour'd nearest and lawful Heir Male to the said deceased D. my Brother, in the Lands, Barony, &c. above disposed, or to any other of my Predecessors, who died last Vnt and Seased therein, and to Raise, and to cause Proclaim the Brieves for that Purpose, and to expedite the Service, and to compare for me thereat, and to return the same to the Chancellary, and to take Instruments, and to do

do all other things requisite, concerning the Serving me Heir in Special, and Heir in General, to the deceast D. my Brother, or others my Predecessors, which I might do my self, if I were personally present, and afterward to procure me Infeft therein, by Raising Precepts upon the said Service, and to cause Register my Seasin: And I being so Infeft and Seased, with Power to my said Procurators, conjunctly and severally, as said is, now as then, and then as now, to Resign, &c. Likeas I, as if I were already Infeft in all of them, and then as now, by these Presents, Resign, &c.

When the Disposition of the Lands, is to the Superior, the Procuratory of Resignation is, *ad remanentiam*, thus, To Resign, &c. in the Hands, and in Favours of the said B. and his foresaids, *ad perpetuam remanentiam*: To the effect, that my Right of Property being consolidated in his Person, with his own Right of Superiority of the same, all and haill the Lands, &c. and others above-expressed, so holden, may remain and abide with him, and his foresaids, heretably and irredeemably, perpetually in all time coming: And thereupon acts, &c.

If the Lands be disposed to the Superior and his Wife, the Resignation *ad remanentiam* must be thus, In the Hands and in Favours of the said B. and his aforesaids, *ad perpetuam remanentiam*, and in favours of his said Spouse, for her Liferent Use, as said is:

To the effect, that my Right of Property may remain and abide with him, and his said Spouse, for her Liferent Use, which failzieing, with his Heirs and Assignneys, &c.

If part of the Lands disposed hold of the Buyer and Purchaser, and other part thereof hold of another Superior, then the two Procuratories *in favorem* and *ad remanentiam* are adjected, containing their respective Lands; But, if it be dubious, which Lands hold of the Purchaser, then all are contained in the procuratory of Resignation *in favorem*: And, immediatly after the Clause, *In favours* &c. in due and competent Form, the Resignation *ad remanentiam* is subjoin'd thus, And, if it shall be found, that any of the said Lands, &c. above-disposed, with the Pertinents, do hold immediatly of the said B. in that Case, with Power to my said Procurators, conjunctly and severally, as said is, to Resign, &c. as I Resign, &c. such Parts and Portions of the Lands, and others above-disposed, that shall be found to be so holding, with all Right, &c. In the Hands, &c. and, In Favours, &c.

Pre-

Of Precepts.

Precepts directed by Heretors, and Persons Infeft, to their Baillies and Officers, are a sort of Commissions, and very like unto Procuratories, such as Precepts by an Heretor for warning away Tenants, and Precepts of Sealin adjoind to a Disposition for Infefting the Purchaser.

Precepts of Warning.

A Heretable Proprietar of the Lands, and others under-written, To _____ Executors hereof, conjunctly and severally, Greeting: It is my Will, and I desire you, That, incontinent this my Precept seen, ye pass 40 days preceeding the Term of Whitsunday next to come, and lawfully warn, conform to the Act of Parliament made concerning Warning of Tenants to remove from Lands, the Persons after-named, pretended Tenants and Possessors of the Lands, and others under-written, viz. (here insert the Names of the Tenants, and of the Lands, as in the Tacks, or in the Heretors Rights,) To Flit and Remove themselves, their Wives, Bairns, Families, Servants, Sub-Tenants, Cottars, Goods and Gear, forth and from the saids Lands, and others

above-written, with the Pertinents, and to desist and cease from them and leave the same Void and Rid at the said Term of Whitsunday next to come, each of the said persons for their own parts, so far as they occupy thereof: To the effect, that I, my Tenants, Servants, and others in my Name, may enter thereto, peaceably Brack, Foice, Occupie, Labour and Manure, Set, Use and Dispose thereupon as my Heritage, at my Pleasure in time coming, conform to my Infeftment and Seasin thereof; And that ye use the whole remanent Order of Warning against the fore-named Persons, for Removing from the Lands, and others above-specified, prescribed by the Acts of Parliament made thereanent: Certifying them, if they do in the contrary, and continue to Occupie, Labour and Possess the Lands, and others fore-saids, after the said Term of Whitsunday next to come, they shall be holden and reputed violent Possessors thereof, and compelled to make payment of the violent Profits of the same with all Rigor. According to Justice, as ye will answer to me thereupon; The which to do, I commit to you, conjunctly and severally, my Officers in that part, my full power, by this my Precept, (written by ———) and subscribed by me at ———

The Act of Parliament to which the Precept refers, is, Act 39. Parl. 6. Queen Mary 1555. And ordains Warning to be made

made at the Door of the Paroch Kirk, within which the Lands ly, on a Sunday, 40 days preceeding Whitsunday in the Forenoon, in time of Divine Service, and some Writers insert in the Precept that Order, which may be done thus, *And sicklike, that, upon a Sunday 40 days preceeding the said Term of Whitsunday, in the Forenoon, that ye pass to the said Paroch Church of B. within which the saids Lands ly, and openly in time of Divine Service, Read, or cause to be Read, this my Precept, and lawfully warn the saids _____ and all others having, or pretending to have Interest, to Flit and Remove themselves, and their Families, as said is: And that ye affix, and leave a just Copie of these Presents, upon the most patent Door of the said Church, that none pretend Ignorance of this my lawfut Warning; and that ye use the whole remanent Order, &c.*

Precepts of Seasin subjoin'd to Dispositions, Bonds for Infestment in an Annual-rent, or other Heretable Right, are in this Stile _____ And lastly, to the effect the said B. may be presently Infest in the Lands and others above-disponed, I by these Presents desire and require you, _____ and each of you, Conjunctly and Severally, my Baillies in that part, to the effect after-specified, specially Constitute, that immediatly after sight hereof, ye pass and give Heretable State and Seasin, with

with Possession corporal, actual and real, of all and sundry the Lands, Mills, Tythes, Patronages, and others above and under-written, viz. (here repeat the Lands, &c. as in the Procuratory of Resignation) to the said B. or to his certain Attorney in his Name, bearer hereof, by deliverance of Earth and Stone of the Ground of the foresaid Lands respective, and of Claps and Happers of the said Mills, and of an handful of Grass and Corn for the said Tythes, and of a Psalm Book for the said Patronage, &c. as use is in the like, conform to these Presents, and Infeftment to follow hereupon, or either of them, and to be holden either of me, or from me of my immediat Superiors in manner above exprest, and that this on no ways ye leave undone: The which to do, I commit to you conjunctly and severally, my Baillies in that part foresaid, my full power by these Presents.

Of Assignations.

IF the Debt be not payed, and the Bond be not Discharged, the same may be conveyed to any person which is done by an Assignation.

An Assignation is a Writ of Conveyance, and applyed only to such as relate to moveable Sums, Rents, or Duties, for when o-ther moveable Goods, as Plenishing, Merchandice,

chandice, or the like, are conveyed, the Writ is Called a Disposition to Moveables.

He who grants the Assignment, is call'd the Cedent, and he who receives it, is term'd Cessioner or Assigney.

The Stile of a simple Assignment to a Moveable Bond whereupon no Diligence has been raised, is thus, *I A. for the Sum of 2000 lib. Scots, with the Annualrent thereof from &c. payed and delivered to me by B. wherewith I hold me well contented and satisfied, and Exoner, quite Claim, and simply Discharge him, his Heirs and Executors of the same, Renouncing all Exceptions that can be propon'd or alledg'd in the contrary, for ever; By these presents make and constitute the said B: his Heirs and Donators (secluding his Executors) my very lawful and irrevocable Cessioners and Assigneys, in and to the Sum of 2000 lib. Money foresaid of Principal, and 300 lib. Money above-written of liquidat Expenses, contained in a Bond granted by C. to me, thereby design'd _____ my Heirs, Executors, or Assigneys, of the date _____ and in and to the Annualrent of the said principal Sum, from _____ and in time coming, during the not payment thereof, and in and to the foresaid Bond, whole Tenor and Contents thereof, with all that has followed, or may follow thereupon, Surrogating and Substituting the said B.*

B. in my full Right and Place of the Premisses, for now and ever, with power to him, or his foresaid, to Ask, Crave, Receive, Intromet with, and Uplift the Sums of Money, Principal, Annualrent and Expenses above-assign'd at their own hands, and to dispose thereupon at their pleasure, and to grant Discharges in their own Names upon the Receipt thereof, in whole or in part; and if need be, to cause Register the foresaid Bond, and use all manner of legal Diligence for recovering Payment of the Sums above mentioned, Compone, Transact, and Agree thereanent; and generally all and sundry, other thing concerning the Premisses to Do, Use and Exerce, that I might have done my self before granting of this Assignation: Which Assignation, I bind and oblige me, my Heirs and Executors, to warrant to the said B. and his foresaids from all Facts and Deeds done and to be done by me, or my foresaids, prejudicial hereto, allenarly, to wit, that I have not made nor granted, and that I nor my foresaids, shall not make nor grant any Assignation, or other Right, or Discharge of the Premisses assign'd that may be hurtful or prejudicial hereto in any sort: Likeas, I have instantly delivered to the said B. the Bond above-mentioned, unregistred, to be keep'd and us'd by him and his foresaids, as their own proper Evident at their pleasure in time coming. Registration, &c.

The Stile of Translations and Retrocessions shall be given hereafter, when we
come

come to Treat of Compound Writts.

In Assignations and Translations granted by Minors, with Consent of Curators, the Minor, with Consent foresaid, obliges himself to warrant the Right from proper Fact and Deed, and in that Stile, the Explication of the Warrantice is seldom insert: As also, the Curators oblige themselves thus,---*And I the said C. bind and obligeme, my Heirs and Executors, not only to warrant the Premisses from my own proper Fact and Deed allenarly: But also, to cause the said A., and failing of him by decease, his nearest Heirs, to ratify these Presents, at their Majority, and perfect Age of Twenty one Tears compleat; And, if need be, to reiterate and renew the same, keeping the Substance above-written.*

When there is Money payed for granting an Assignation, it is either specially express'd, or in general Terms, thus,---*For a certain Sum of Money, and no more, and when special, thus, —For the Sum of—* Or,---*For a certain Sum of Money, equivalent to the Sums hereafter assign'd.* In both which Cases, there must be a Receipt of the Money, and a Discharge thereof, and a Renunciation of all Exceptions, as in the preceeding Stile of an Assignation.

When part of the principal Sum contain'd in the original Bond being payed, the remainder is assign'd, the Sums are mentioned in the Assignation in this manner,

—In and to the Sum of 2987 Pounds, only resting of the principal Sum of 4000 Pounds, and to a proportional part of the Sum of 400 Pounds of Penalty effeirand thereto, contain'd in a Bond granted by—to me, of the date, &c. And to the Annualrent of the said Sum of 2987 Pounds, during the not payment of the same, and in and to the said Bond, &c. with all that has followed, or may follow thereupon, in so far only as may be extended to the Sums of Money Principal, Annualrent and Penalty above assigned, for now and ever, &c.

An Assignment made by a Liferenter, to the Fiar of Moveable Sums provided to her in Liferent, and contain'd in Bonds granted to her, and to the Fiar, are much of the same Form and Tenor with common and ordinary Assignations, and is thus,

I A. for divers Onerous Causes and Considerations moving me, by these Presents make and constitute B. &c. my Cessioners and Assigneys, in and to my Liferent Right of the Sums of Money after specified, and Annualrents thereof, whereunto I am provided, during my Lifetime, conform to the Bonds after mention'd, granted by the Persons after nam'd, each of them for their own parts, as is after divided, to wit, the Sum of—as Principal, and the Sum of—of liquidat Expenses, contain'd in a Bond granted by—for my Liferent Use allenarly, and to the said B. his Heirs, Executors or Assigneys in Fie, of the date— [in like manner deduce the rest of

of the Bonds,] And in and to my Liferent Right of the ordinary Annualrent of the said principal Sums, of all Tears and Terms bygone, resting unpaid, and in time coming, during the not payment thereof; and to the foresaids Bonds themselves, whole Clauses, Obligations, Tenors and Contents of the same, conceived, or that may be interpreted in favours of me, with all that has follow'd or may follow thereupon; And to all Action, &c. in the ordinary Stile; The Clause of Delivery in this Case commonly bears, so many of the Bonds to be delivered, as the Cedent had in her Custody.

An Assignment to Accompts is in this Stile,—Assigneys, in and to what Money, and other Profire shall be found due to me, upon the result of a Compt and Reckoning betwixt me and B. surrogating, &c. with power to uplift, discharge and pursue for the same, and transact thereanent. In common Form.

When a Bond is taken in the Name of a Trustee, and by him assign'd to the Truster, the Assignment, when there's no Diligence rais'd on the Bond, is in this Stile,

I A. acknowledge and confess, That albeit my Name be insert, in the Obligement after-mentioned, yet the same was in Trust, and the Sums contain'd therein do truly and properly belong to B. to whom I have delivered the Annualrents thereof, which were resting preceeding the Term of Whitsunday last bypast, in

respect the principal Sum was really lent by him, and my Name was only borrow'd thereto : And therefore I, by the Tenor hereof, make, constitute and ordain the said B. his Heirs, &c. In common Form.

An Assignment to bygone Tythe Duties, in a simple Form of Stile, is thus, I A. do hereby freely assign and dispoise to B. his Heirs and Donators, the whole Tythe Duties, resting to me for my self, or as having Right from my Predecessors, of the Lands of— : And that of all Years and Cropts resting unpaid, preceeding the Cropt and Year 1714, with power to him, or his foresaids, to uplift and discharge the same ; And, if need be, to call and pursue therefore, and to do what else is requisite, for recovering payment thereof, that I might have done my self before the granting of this Assignment, which I shall only be oblig'd to warrant from my own proper Fact and Deed allenarly : Declaring, That, if their be any Receipts, or Discharges granted by me, or my Chamberlains, of the said Tythe-Duty, preceeding the Year 1714, the same shall not infer a breach of this Warrantice, this Assignment being only granted for such Years thereof, as are resting.

From these few Examples, it is easy to form a Stile of an Assignment in any other Case : And what is needful to be said further concerning Assignations, is referred to the following part.

Of Compound Writs and Securities.

BY Compound Writs, I understand all these, wherein another Writ is narrated, which contains an Accumulation of divers sorts of Securities, and which commonly begin with, *Be it known to all Men, &c.* Having a Narrative beginning with this word, *Forasmuch as, &c.* and a Subsumption in these words, *And now seing, &c.* with an Induction thus, *Therefore wit ye me, &c.* And because Compound Writs are so called from the various parts they consist of, before we proceed to speak of those, it is necessary to give some general Rules and Examples, how Simple Writs are abridg'd and narrated.

In Abridging of Bonds, Discharges, &c. of any sort, when they are subjoin'd to other Writs, all the essential Clauses must be express'd; for they cannot be abridg'd otherways, than by omitting the Exegetick and Synonymous Words: And these Clauses, which are only Explicatory and Ampliations of others, all which are fully express'd, when the Bond, Discharge, &c. is in a Writ by it self.

In narrating Simple Bonds, and other Simple Writs, the same Rule is to be notic'd;

tic'd ; for various Forms are us'd, according to the Design of the Paper in which they're narrated ; for sometime one Clause is more particularly respected, and sometime another ; But this is more particularly applicable to the narrating of Compound Writs.

A Bond of borrow'd Money may be thus narrated in the beginning of another Writ, *Forasmuch as A. by his Bond dated—, bound and oblig'd himself to have pay'd to B the Sum of 12000 Pounds Scots of borrowed Money as principal, with Annualrent from Martinmas preceeding the date of the Bond, and that at Martinmas in the Year 1713, with 800 Pounds Money foresaid of liquidat Expenses, in case of failye, and with the Annualrent of the said principal Sum, so long as the same should remain unpaid after the Term of payment foresaid, as the said Bond Registred in the Books of Council and Session, and a Decreet of the Lords thereof interpon'd thereto, upon—more fully proports.*

If the Bond be narrated in Letters of Horning at the Creditor's Instance, it is not mention'd, That the Debitor bound himself, and his Heirs, and Executors, nor that the Money was payable to the Creditor's Heirs or Assignes ; It is otherways, if the Bond be mention'd in a Conveyance, or if the Horning be at an Assigney's Instance,
or

or if the Bond be narrated in any Summons against the Debitor's Successors.

A common Bond, and the Sums therein contained, in the Dispositive Clauses of Assignations, are thus narrated—*Assigney in and to the Sum of—of principal, and twenty Pounds of liquidate Expenses, contained in a Bond granted by C. to me, my Heirs or Assigneys thereanent, dated, &c. and Annualrent of the said principal Sum, since the Term of—, and in time coming, during the not payment thereof, and in and to the foresaid Bond it self, &c.*

But, when the Bond is mentioned in the Narrative of the Right and Conveyance, the same is, in the Dispositive Clause, thus briefly expressed,—*Assigney in and to the Sum of 200 Pounds, and 20 Pounds of liquidat Expenses, and the Annualrent of the said principal Sum from, &c. and in and to the foresaid Bond, and whole Tenor, &c.*

A Bond of Provision may be thus narrated,—*Forasmuch as I, by my Bond of Provision, of the date, &c. bound and obliged me, &c. to make payment to ---, my Children, of the Sum of ---, to be divided among them in manner following, viz. (here narrate the particular Sums, and other parts of the Bond, as if it were for borrowed Money.)*

In Narrating all sort of simple Bonds, Discretion and the Scope of the Writ in which they are to be Narrated, will direct what

what Clauses are to be more fully exprest; for no Essential one is to be left untouched.

Discharges are Narrated thus, *Forasmuch as A by his Discharge of the date granted him to have received, &c. and therefore Exonerated and Discharged the said ---- as is mentioned in the Discharge briefly.*

The Bond for borrowed Money, or any other Right which has been Assigned, being Narrated in a Translation or Discharge, or other Conveyance thereof, the Assignment is narrated in this manner, --- *Likeas, the said A by his Assignment of the date, &c. made and constitute B. his Heirs or Donators, secluding his Executors, his very lawful and irrevokable Cessioners and Assignneys, in and to the Bond abovementioned, and whole Sums of Money Principal and Annualrents, and Expences abovespecified, contained therein, as the said Assignment bears.*

Or thus ——— *Cessioners and Assignneys in and to the Sum of 8500 Merks and Annualrents thereof, from the Feast of Lambmas 1714, and the said Sum of 1000 Merks of Penalty, and in and to the Obligation and Obligement for Infesting, and whole other Clauses and Obligements therein contained, as in the foresaid Assignment at more length is expressed.*

This last Assignment to the Clause of Infestment, is usual only where there is no more than a naked Obligement to Infest, with-

without either Procuratory of Resignation or Precept of Seisin; for Assignations to Heretable Bonds, whereupon no Infeftment has followed, are otherways narrated, as shall be told in its proper place, and if Infeftment has followed, the Right is conveyed by Disposition.

Another and more full way of narrating an Assignation. *Likeas, A. by his Assignation, dated &c. for the Causes therein exprest, made and constitute B. his Heirs and Donators, Cessioners and Assigneys, in and to the foresaid three Bonds and Sums of Money, Principal and liquidat Expenses above-mentioned, therein contained, and to the Annualrent of the said three principal Sums, from the Term of Candlemas 1714 during the not payment thereof, and in and to the said three Bonds themselves, whole Heads, Clauses, and Obligements thereof, with all that has followed or may follow thereupon, as the foresaid Assignation more fully bears.*

To supply the Defects from the Writers studying Brevity, the Narrative of every Write concludes thus, *As the said Bond, (Discharge or Assignation) in it self more fully bears, or Proports, or as in the said Bond at more length is contained or exprest, and the like.*

Of Bonds Heretable.

AMong the first of Compound Bonds, I give place to an Heretable Bond, which in the beginning has the Clauses of a simple Bond, and differs only in that part of the Obligement, which relates to the Payment of the Annualrent, as will appear from the Stile of both, after the usual Clauses of a Bond of borrowed Money, follows. 1. An Obligement to Infeft. 2. A Procuratory of Resignation. 3. A Clause or Obligation of Warrandice in short Form. 4. A Disposition of all Casualties of Superiority of the said Annualrent holden *de me*, 5. An Assignment to the Mails and Duties, in so far as extends to the Annualrent 6. A Declaration that personal Execution shall not hurt the real Right. 7. A Precept of Seisin. 8. A Clause of Redemption. All which are in this Stile.

We A. and B. By the Tenor hereof, grant us to have borrowed, and really received at Martinmas last bypast from C. the whole Sum of 20000 lib. Scots Money wherewith we hold us well contented & satisfied, and Exoner & Discharge him, his Heirs and Executors of the same, renouncing all Exceptions that can be proponed or alledged in the contrair, for ever; which Sum of 20000 lib. we by these presents bind and

and oblige us, Conjunctly and Severally, our Heirs as well Male as of Line, Tailzie, Conquest, Provision, and all other our Heirs, Successors, Executors, and Intrometters with our Goods and Gear whatsoever, renouncing the Benefit of the order of discussing them, thankfully to content, pay, and deliver again to the said C. his Heirs or Assignneys (secluding his Executors) betwixt the date hereof and the Feast and Term of Whitsunday in the Tear 1715, without longer delay, together with the Sum of 3000 lib^s Money foresaid of liquidat Expenses in case of failzie, together also with the Annualrent and Profit of the said principal Sum Yearly and Termly at two Terms in the Tear, Whitsunday and Martinmas, by equal Portions, beginning the first terms payment thereof at Martinmas next to come, for the half years Annualrent immediatly preceeding that Term, and so forth termly thereafter at the Terms above-specified, by equal Portions during the not payment of the said Principal Sum, with 100 Merks Money foresaid of liquidat Expenses for each Terms failzie in payment of the said Annualrents toties quoties, without prejudice of suing Execution hereupon at the Term of Payment above-specified, or any time thereafter, without Requisition, notwithstanding of the Clause of Infestment after-specified, and Infestment to follow thereupon: And for further Security thereanent, we the said A. and B. bind and oblige us, our Heirs and Successors foresaid,

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with

with all convenient Diligence, and upon our own proper Charges and Expenses, to duly and lawfully Infeft and Seife the said C. and his forefaids heretably, under Reversion, in manner after-specified, in all and whole an Annualrent of 1800 Merks Money foresaid, and in case Annualrents be altered, in such an Annualrent as shall be Correspondent to the foresaid pincipal Sum, conform to the Laws of this Kingdom for the time, yearly to be uplifted at Whitsunday and Martinmass, by equal Portions, furth of all and whole [here insert the Lands out of which the Annualrent is upliftable] or furth of any Part or Portion thereof, Mails, Farms, Profits and Duties of the same, and that by two severall Infeftments in due and competent Form, the one thereof to be holden of us the said A. and B. Respective, our Heirs and Successors, and the other to be holden from us and our forefaids of our immediat Superiors Respective, of the Lands and others above-exprest, both in free Blench, for payment yearly of a Penny Scots Money at the Feast of Whitsunday, in Name of Blench Farm, if it be asked allenary: And for effectuating of the foresaid Infeftment by Resignation, we the said A. and B. by these Presents, make and constitute -----
 and each of them, Conjunctly and Severally, our very lawful and irrevocable Procurators for us, and in our Names, to Resign, &c. Likeas, we by these Presents Resign, &c. all and whole
 the

the foresaid Annualrent of 1800 Merks; and in case Annualrents be altered, such an Annualrent as shall be correspondent to the foresaid Principal Sum of 20000 lib. conform to the Laws of this Kingdom for the time, yearly to be uplifted at the Terms above-specified, by equal Portions, furth of the Lands, Barony, and others above-express'd, with the Pertinents, or furth of any part thereof, readiest, Mails, Farms, Profits, and Duties of the same, together with all Right, Title, Interest, and Claim of Right, that we, our Heirs or Assignies had, have, or any ways may claim or pretend to the said Annualrent, during the not Redemption thereof, In the Hands of our immediat lawful Superior or Superiors Respective of the Lands, Barony, and others above-exprest, presently being, or that shall happen to be for the time, or of his or their Commissioners having power to receive Resignations in his or their Names, In Favour, and for new Infeftment of the same to be made and granted to the said C. and his Heirs and Assignies foresaids, heretably, and under Reversion, always in manner after-specified, in due and competent Form, and thereupon Acts, Instruments, and Documents, &c. As in the Stile of a Procuratory of Resignation. Which Annualrent and Lands, Baronies, and others above-mentioned, out of which the same is hereby appointed to be uplifted; we the said A. and B. bind and oblige us conjunctly and severally, and our above-specified, as said is, to Warrant, to be Free, Safe, and

and Sure to the said C. and his foresaids, from all Perils, Burdens, Impositions, Taxations, Cesses, Supplies, Retentions, and other Inconveniences whatsoever, at all hands, and against all deadly, during the not Redemption thereof: And further, in case it shall please the said C. and his foresaids, to take the foresaid Annualrent holden of us the saids A. and B. in that case we bind and oblige us Conjunctly and Severally, and our foresaids, to enter and receive him, his Heirs and Successors, or any person to whom he or they shall dispoⁿe the same from time to time, during the not Redemption thereof, Vassals to us thereintill, and that Gratis, and freely without any Composition or good Deed to be payed or done therefore, and also to dispoⁿe in their Favours, Likeas, now, as then, and then as now, we, by these presents, for us, our Heirs & Successors, Assign and Dispoⁿe to them all Casualties of Liferent Escheat, Non-entry, and other Casualties whatsoever, that shall happen to fall in our Hands as Superiors of the said Annualrent, during the not Redemption thereof, and that likewise Gratis, without payment of any Money or other Gratitude whatsoever. And moreover, for the more certain and sure payment of the said Annualrent, we the saids A. and B. By these Presents, make and constitute the said C. and his foresaids, our very lawful and irrevocable Cessioners and Assigneys, in and to as much of the first and readiest of the Mails, Farms, Profits, and Duties

ties of the whole Lands, Baronies, and others above-specified due at Martinmas next to come, and thereafter during the not Redemption, as will satisfy and pay the foresaid Annualrent in manner, and at the Terms above-exprest, and termly Penalties thereof, in case of failzie, and to all Action and Execution competent to us therefore, and Surrogate and Substitute the said C. in our full Right and Place thereof, pro tanto; which Assignment we bind and oblige us and our foresaids, Conjunctly and severally, to warrant to the said C. and his foresaids, at all hands, and against all deadly: And it is hereby declar'd, that albeit the said C. shall use Execution hereupon, by Horning, Adjudication, Apprysing, or otherways, yet the Infeftment of Annualrent above-specified shall not be hurt nor prejudged thereby, but shall continue effectual, notwithstanding thereof, till the whole Sums above-specified be payed: And to the effect the said C. may be presently Infeft in the Annualrent above-mentioned, to be holden either of us the said A. and B. or from us of our immediat Superiors, or both, or any one of the saids Holdings, the one without prejudice to the other, in manner above-exprest, we, by these presents, desire and require you

and each of you, conjunctly and severally, our Baillies in that part, to the effect afterspecified specially constitute, That immediatly after Sight hereof, ye pass and give Heretable State and

Seasin

Seafin, with Possession Corporal, Actual and Real, of all and whole the foresaid 1800 Merks Money foresaid; And in case Annualrents be altered, of such an Annualrent, as shall be correspondent to the foresaid principal Sum, conform to the Laws of this Kingdom for the time, yearly to be uplifted at the Terms above specified, by equal Portions, furth of the Lands, Baronies, and others abovementioned, with their Pertinents, or any part thereof, readiest Mails, Farms, Profits and Duties of the same, to the said C. or to his certain Attorney in his Name, one or moe, Bearers hereof, by Deliverance of Earth and Stone of the Ground of the saids Lands, and also of a Penny Money, as use is in in the like, conform to these presents and Infeftments to follow hereupon, or either of them, to be holden either of us the said A. and B. or of our Superiors, as is above-exprest, and that this on no ways ye leave undone. The which to do we commit to you conjunctly and severally, our Baillies in that part foresaid, our full power by these presents; Providing always the said Annualrent be redeemable by us the saids A. and B. or our foresaids, by payment making to the said C. or his foresaids at Whitsunday next to come, or at any other Term of Whitsunday or Martinmas thereafter, of the foresaid principal Sum of 20000 Pounds, with the Annualrents thereof, and Termly Failzies of the same, that shall happen to be resting for the time, and of such Expenses as he shall deburse in procuring an Infeftment

ment from the Superior, by Resignation or Confirmation, or in procuring Decrets for Pointing of the Ground, or in using of other Diligence, conform to an Accompt to be given in by them to us therefore, without any Premonition to be made by us to him for that effect; And that these Presents, or a Double hereof, or an Extract of the Seasin to follow hereupon, shall serve as a sufficient Reversion for that effect, notwithstanding of whatsoever Act, Law, or Statute made, or to be made in the contrary. Follows the Clause of Registration, &c.

The Clause of Infeftment, or the Obligement to Infeft, is diversly expressed, according to the Inclination of the Writer, as, *And, for the said B. his further Security thereanent, I bind and oblige me, &c.* Otherways, *And we being further desirous to secure the said C. and his foresaids, concerning the payment to them of the Annualrent of the said principal Sum, until the repayment thereof: Therefore we, by these Presents, bind and oblige us, &c.*

I have seen the Casualties of Superiority all Taxed and Liquidated in this Form,
 — Both in free Blench; for payment yearly of a Penny Scots, at the Feast of Whitsunday, upon the Ground of the said Lands, if it be asked allenarly; and for the payment of two Pennies Money foresaid, for the Entry of each Heir and singular Successor; And likewise, for payment of four Pennies Money foresaid

said yearly, during the Years that the said Annualrent shall happen to fall, and to be in Non-entry, before Declarator: Which Sum of two Pennies Money foresaid is agreed unto, and ordained to be the Retoured Duty of the said Annualrent, and for payment of eight Pennies Money foresaid, that the said Annualrent shall ly in Non-entry after Declarator, and for payment of six Shilling eight Pennies yearly, for the Liferent Escheat of the said C. and his Heirs and Successors, so oft as the same shall happen to fall in the Hands of us, or either of us, our Heirs or Successors; And which Liferent Escheat, we bind and oblige us, conjunctly and severally, and our foresaids, to dispo-
 ne, likeas we, per verba de presenti, now, as if the saids Liferent Escheat were already fallen, and then as now, for us and our foresaids, by these Presents, dispo-
 ne to the said C. his Heirs or Assignes, or to any other he or they shall please to nominat, the same Liferent Escheats, for the payment of the said Sum of six Shilling eight Pennies yearly, during the Lifetime of that Person, whose Escheat shall happen to fall, and that either by Resignation &c. And, in the Precept of Sealin, the same Duties were at length exprefs'd. —
 To be holden either of us, and our foresaids, or from us and them, of our immediat Superiors, in manner above exprefs'd, and for payment of the Duties abovemention'd, viz. Here they are repeated.

When

When the Sum is to be payed upon Re-
quisition, the Clause of Requisition is insert
immediatly after the Term of Payment,
and before the Obligement for the Penalty,
in this Form, ——— At Candlemas next,
in the Tear 1705, Requisition being always
made by them to us, or either of us, ———
which shall be sufficient for both, personally, or
at our Dwelling Places, in presence of a Not-
tar and Witnesses, as effeirs, 40 days preceed-
ing the Term, at which the Money shall be cal-
led for, and there being only 40000 Merks re-
quired at one Term, with the Sum of ———
liquidat Expenses, &c.

In the Clause of Redemption, this relat-
ing to the Premonition was insert, ———
And of such Expenses, &c. The Place of Re-
demption to be within the New Session-House of
Edinburgh, at that Place thereof, where the
Commisars use to sit in Judgment, and the
Consignation, in case of Absense or Refusal, to
be in the Hands of the Dean of Guild or Trea-
surer of Edinburgh, upon the Peril and Ha-
zard of the Consigner, Premonition being always
made by us to them, 40 days preceeding each
Term, personally, or at their Dwelling Places,
in presence of a Nottar and Witnesses, as effeirs,
and that these Presents, or a Copy hereof, &c.

In the Assignation to the Mails and Duties,
this Clause may be insert, And to cause the Te-
nants of the foresaid Lands and Barony enact
themselves in a fenced Court, for payment of

the said Annualrent Termly, as it falls due.
This is plac'd after the Warrantice of the Assignment.

A Writer should know, by what manner of Holding, the Lands hold of the Superior, and so never to insert a Precept of Seafin, except he be sure, the Lands hold not Waird or Feu, with condition *de non alienando*: However, if part of the Lands hold Waird, and part of them otherways, the Precept of Seafin ought to mention only such as are not Waird; But, if it be doubtful, which are Feu, which are Waird, a Reservation may be adjected to the Precept in this Form, ——— *Reserving always so many of the foresaid Lands and Tenendry of ——— which hold Waird or Taxt Waird, conform to the Charters and Infeftments thereof; under which Exception and Reservation, the said C. is to take Infeftment, and no otherways.*

If the Heretable Bond bear Infeftment of Annualrent, to be taken out of the Lands, wherein the Debitor's Wife is infeft in Life-rent, it were proper, that the Wife did not only consent to this Bond, but bind her self with her Husband, through all the real Clauses thereof: The ordinary Practice bears, That the Wife consent to all the Clauses and Obligements relative to the Infeftment, and such Bonds should contain Obligation to cause the Wife ratifie her Consent or Obligements judicially, and the
same

same ought accordingly to be ratified, as shall be fully told, when we come to Dispositions of Lands Liferented by a Wife.

When the Land and Estate, out of which the Annualrent is to be uplifted, belongs to the Wife in Property and Heretage, then she is mentioned in the Clauses of the Heretable Bond that concern the Infeftment, as the principal Party, and the Husband only consents in the same way, as in a Disposition of her Heretage: The Stile of which shall be given in its proper place; From the Form of which Dispositions, one may easily know, how to write an Heretable Bond in the two Cases above-mentioned.

When the Heretable Bond is granted by Principal and Cautioners, this Clause may be insert, *And if I the said B. shall make payment of the Sums contained in this Bond, in that case, the said C. and his foresaids, shall be holden to assign to me the foresaid Infeftment upon the said A. his Estate, with what Diligence has followed thereupon, with Warrandice from their own proper Fact and Deed. Follows the Clause of Relief, and both these are put in the last part of an Heretable Bond, and before Registration.*

Of

Of Bonds and Assignations Conjoin'd.

WHen the Creditor thinks the Personal Security is not sufficient, and the Debtor has no Real Estate, but only Moveable, for the first is alwise to be preferred: Then, to the Simple Bond of borrowed Money, is subjoined an Assignation to Bonds, or to Moveable Goods; In the first Case, the Stile is, *And for the said B. and his foresaids, their further Security, I the said A. by these Presents, Assign, Transfer and Dispone from me, &c. to the said B. and his foresaids above-written, as much of the first and readiest of the Sums of Money due to me by whatsoever Person or Persons, especially of the Money due to me, &c. Or whereunto I may have Right from ——— any manner of way, as will satisfy and pay the Sums of Money principal, Annualrents and Expenses above-specified, contained in this Bond: Surrogating and Substituting the said B. and his foresaids, in ourfull Right and Place thereof pro tanto forever, with power to him, and his foresaids, to ask crave, receive, intromet with, and uplift the same, to grant Discharges thereof, in whole or in part, in their own Names; And, if need be, to call and pursue therefore, and to use all manner of legal Diligence for recovering*
pay.

payment thereof, and generally, all and sundry other things concerning the Premisses to do, use and exerce, which I might have done my self before the granting of this present Assignment: Which Assignment and Translation, I bind and oblige me, and my foresaids, to warand to the said B. and his above-specified at all Hands, and against all Deadly. Follows the Clause of Registration.

In the second Case, when Goods are disposed, the Stile is, ——— by these Presents Sell, Assign, and Dispone to him and his foresaids, all and whole. Here set down the particular Goods, whether Cattel, Corns, Plenishing, or others; And then follows the Stile of a Disposition of Moveables, as shall be shown hereafter.

It were proper that the Goods were valued, and one bound Caution to make them furthcoming, seeing generally poor Debtors are left in the Possession of the Goods, though disposed, which may be exprefs'd in this, or the like Stile.

And for securing the Right of the said Goods, J. C. as Cautioner, &c. bind and oblige me, &c. that the whole Goods above-mentioned, or the Values thereof, according to the price above set down, shall be furthcoming to the said B. and his foresaids, and in case any of them be wanting or spoiled or deteriorated, I oblige me to make the same, or as good, or at least
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the value thereof, furthcoming to him, as accords.

Of Bonds by Factors, and these granted upon a reserv'd Faculty to burden another Person, and his Estate.

THese Obligations which are granted by Factors, or these to whom the Management of a special business is committed, with power to borrow Money for the Constituents use, are very rare, and uncommon; However, for Institution sake, know, that they may be in this Form, they begin with these Words, *Be it known, &c.* next the Factory is narrated, and particularly the power to borrow Money; Then it is subjoin'd, *That C. upon the Faith of the said Factory and power abovemention'd therein contain'd has advanc'd and pay'd to the Factor the Sum of 1000 lib. Scots Money, wherewith he holds himself well Content; &c.* In the Stile of a Bond, *Therefore wit ye him as Factor foresaid, and by vertue of the Power and Faculty above-specified, to have bound and oblig'd: Likcas, &c.* The said B. his Heirs and Successors whatever, *thankfully to Content, Pay, and Deliver, &c.* As in a Bond of borrowed Momey.

It is proper that the Bond mention the Business and Use the Money was to be employ'd in, as is set down in the Bond granted

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ed by the Deacon and Masters of an Incorporation.

Like unto this sort of Obligation, and which are more in use, are Bonds granted by persons, who, in a Disposition of their Estate, had reserv'd a Power and Faculty to burden the said Estate, and the Purchaser thereof, with the payment of certain Sums. The which Bonds are in this Form, or the like

Be it known, &c. me A. Forasmuchas, by the Contract of Marriage past and perfected at _____ upon _____ betwixt _____ by vertue whereof, and for the Marriage then Contracted, and thereafter Solemnized betwixt my said Son and the said _____ I Gave, Granted, and Disposed to the said A. my said Son, and his Heirs of Tailie thereinmentioned, all and sundry, the Lands and Barony of _____ as they are more particularly designed in the foresaid Contract, under the Reservations therein specified, particularly there is reserved to me by my self alone, without the consent of the said A. my Son, to burden the said parts of the foresaid Lands and Baronies of _____ whereof the Liferent is reserved to my self, with the Sum of _____ in case I should think fit so to do, payable to any person or persons I pleased, within the year and day of my Death; with 10 Merks of Penalty for each 100 lib. of Principal in case of failzie; and Annualrent of the said principal Sum so long as it shall remain

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unpayed after the Term of Payment foresaid, and to grant Bonds bearing Infestment either in Property or in Annualrent for further Security thereof, which the said A. and his fore-saids are thereby holden to perform and fulfill, and which Sum of — the said A. binds and obliges him, his Heirs and Successors, to pay to the Person or Persons, to whom I shall appoint the same to be payed, and that at the Term of Payment above-mentioned, with the foresaid Penalty, in case of Failzie, and Annualrent for the said principal Sum so long after, as the same should happen to remain unpayed, and that whether the same be due by Moveable or Heretable Bond, as in the foresaid Contract is at more length exprest: Likeas, by another Contract Matrimonial, of the date at — betwixt B. my second lawful Son on the one part, and — on the other part, by vertue whercof, and for the Marriage then Contracted, and thereafter Solemnized betwixt them, I bound and obliged me, my Heirs, Successors and Executors, betwixt and the Term of Martinmas last bypast, to pay to the said B. my Son, his Heirs &c. the Sum of — with the Sum of — of liquidat Expenses, in case of Failzie, with the ordinary Annualrent of the said Principal Sum, from Martinmas last bypast, during the not payment of the same, as in the foresaid Contract at more length is contained, And I being now Resolved, to
appoint

appoint the said 14000 Merks, which I am bound to pay to the said B. my Second Son, to be pay'd out of the foresaid 40000 Merks, wherewith I have Power to burden the said A. my Eldest Son and the Lands above-mentioned: Therefore wit ye me, to have Analzied, Sold and Disponed, As I, by these presents Analzie, &c. to the said B. my Son, and — his Spouse, and to the longest liver of them two in conjunct Fee and Liferent, and to the Heirs Male, lawfully procreat, &c. the Sum of 14000 Merks, as a part of the said Sum of 40000 Merks, with the proportional part of the Penalty above-mentioned effeiring thereto, and the Annualrents of the said 14000 Merks, so long as the same shall remain unpaid after the year and day immediatly following my decease: As also, the said Contract of Marriage past betwixt my Eldest Son and his said Spouse, with the Reservation above-mentioned, contained therein, and Obligement granted by the said A. relative thereto, so far as they may be extended to the said Sum of 14000 Merks above-mentioned, thereof, and a proportional part of the Penalty hereby Analzied and Disponed. And for further Security thereanent, I the said A. and I the said a. bind and oblige us, our Heirs, &c. to make due and thankful payment to the said B. and — his Spouse, and to the longest liver of them two in conjunct Fee and Liferent, and to the Heirs Male procreat or to be procreated betwixt them,

&c. the Sum of 14000 Merks, and that at the Feast and Term of — without longer delay, with the Sum of 1400 lib. of liquidat Expenses in case of Failzie; Together also with the ordinary Annualrent of the said 14000 Merks, conform to the Act of Parliament and custom of this Kingdom, Yearly, Termly, Monthly, and Proportionally, so long as the same shall remain unpaid after Martinmas, in this year 1715, without prejudice of suing Execution at the Term of Payment contained in this Bond, or at any time thereafter, without Requisition: And because the said a. is not lyable to me the said A. for the Annualrent of the said Sum till year and day after my Death; Therefore I the said A. bind and oblige me and my foresaids to warrand, &c. the Annualrent of the said Principal Sum, from Martinmas next till Tear and Day after my Decease, and of all Coast, Skaith, Damage, Interest, and Expense that he or his foresaids should happen to sustain or incur therethrough in any sort. And I the said a. bind and oblige me, and my foresaids to warrand the said A. my Father, and his foresaids, of the said Sum of 14000 Merks, and of the Annualrents thereof, and Penalties foresaid, after Tear and Day immediatly following his Decease, and of all Coast, Skaith, Damage, Expenses, or Interest, that he or his foresaids shall happen to sustain or incur therethrough, in any sort.

Of Qualified Bonds.

Bonds are either Pure or Simple, without any Quality, Condition, or Restriction; Or, they are Qualified, that is, They have not so ample effect as the other sort, but are Limited, and have only a certain Effect, as the Provisions in the Bond determine.

These Conditions, Restrictions, and Limitations are Various, according as the Party pleaseth: But it is to be noticed, That they are not determined by the Debitor in the Bond, who is precisely bound to pay the Money, but they are formed at the Will and Determination of the Creditor, who may dispose of his own as he pleaseth. Tho' when a Man by way of Donation, obligeth himself to pay a Sum of Money, he may adject to the Bond what Conditions and Qualities he thinks fit.

The forming of Pure and Unqualified Bonds, may be known from what has hitherto been delivered. I shall now give Examples of Qualified Bonds, for there may be as many of them, as a Man may devise of Conditions and Limitations, which are indefinite: And from the following Examples it shall be easie to know how to draw any other qualified Bond.

When

When a Man has sold Land, against which others may have a Claim; and in that Case it may be advised that Legal Diligence will establish a better Right than a Voluntar Disposition; In which Circumstance, the Purchaser buys with the Price, all Adjudications, Apprisings, and other real Rights on the Estate; and by a Provision in the voluntar Disposition he is allowed so to do, and also to impute and ascribe his Possession to any one, or to all of these, or to the voluntar Right, as he pleases: However, to make up all Defects, he takes a Bond from the Seller for a considerable Sum of Money, at least for the Price payed, of design to lead an Adjudication; And the Bond is in this Stile, *I. A. by these presents grant me have received from B. for himself, and in Name and behalf of his Grand-Children, after-named, the whole Sum of 25000 Merks Scots Money, whereof I discharge him, and all others whom it effeirs, and renounce all Exceptions of the Law that can be proponed or alledged in the contrar; which Sum of 25000 Merks, with the Annualrent thereof from the date hereof to the Term of payment after-mentioned, I bind and oblige me, my Heirs and Successors, Executors and Intrometters with my Goods and Gear whatsoever, to Content, Pay, and Deliver again to the said B. he being on life, and failzieing of him by decease to—and that betwixt and the date hereof and*

and the---day of---next to come without longer delay, together with the Sum of 1200 lib. Money foresaid of liquidat Expense in case of failzie, together also with the ordinar Annualrent of the said Principal Sum, conform to the Act of Parliament and Custom of the Kingdom of Scotland, Yearly, Termly, Monthly, and Proportionally, so long as the same shall happen to remain unpayed after the day of payment above-specified, without prejudice of suiting Execution hereupon, than or at any time thereafter, without Requisition. It is always hereby provided and declared, That it shall not be lawful to the said B. nor his Grand-Children, or to any of them, their Heirs or Assigneys to use any Execution upon this Bond, personal or real against any other Estate real or personal belonging to me, my Heirs or Executors, but allenarly against the Lands and others after-mentioned, viz.---R. which Lands and others above-mentioned are sold by me to the said B. and failzieing of him by decease to the said --- his Grandson and his Heirs, wick failzieing to the other Substitute Heirs mentioned in the foresaid Disposition, and for securing them in that Purchase, either by Adjudication, or otherways as they please, this Bond is allenarly granted. Registration.

When an Apparand Heir intends to quarrel Apprysings, Adjudication, and other Legal Diligence led against his Predecessors Estate, he uses to grant a Bond for borrowed

rowed Money to a Trusty, to the end an Adjudication being deduc'd, there may be a valide and sufficient Title for quarrelling and reducing Antecedent Diligence, or for proving the Creditors therein payed by Intromission: The which Bond may contain such Qualities and Conditions as this above-mentioned.

Another sort of qualified Bonds, is when the Sum is Tailzied with certain Provisions, as when the Money is given to a Son or Daughter, so that it cannot be affected by Creditors, as in the following Example. *Be it known to all Men by these presents, me A. Forasmuch as, by a Disposition and Tailzie of this date, I have dispoed to my Son B. and his Heirs Male of Tailzie and Provision therein-mentioned, my whole Lands and Estate therein-mentioned, under the Reservations, Provisions, Restrictions, and Declarations therein specified; and particularly with this Provision, That the said B. and his foresaids, shall be holden and obliged to pay all just and lawful Debts already contracted, or that shall happen to be contracted, and be due by me the time of my decease: And also, to pay all Sums of Money that it should happen me to Provide, Leave, or Bequeath to whatsoever Person or Persons at any time in my Life, vel in in ipso articulo Mortis, as in the foresaid Disposition and Assignment at more length is contained: And I being Resolved, that C. my Second Daughter,*
Sponse

Spouse to — and the Children Procreat or to be Procreat betwixt her and her said Husband, shall be secured in 20000 Merks Scots Money, in manner aftermentioned, and under the Provision always afterspecified: Therefore, wit ye me, to be bound and obliged; Likeas by the expresse Quality of the said Disposition and Tailzie abovementioned, I bind and oblige me and the said B. my Son, and his Heirs Male of Tailzie and Provision, succeeding to my Estate, to make due and thankful payment of the Sum of 20000 Merks Money foresaid, to the said C. in Lifetime, and after her decease 600 Merks of the Annualrent of the said Sum yearly, to D. her Daughter, during all the days of her Lifetime, and the Fie of the said whole Sum to belong to my saids Daughters other Children Procreat; or that shall happen to be Procreat betwixt her and the said — equally amongst them; and failzieing of any of them by decease, to the surviving Children, their Heirs of their own Bodys, or Assigneys for an Onerous Cause; which failzieing to return to the said B. my Son, and his Heirs Male, and of Tailzie and Provision succeeding to my Estate, and that at the Terms following, viz. 5000 Merks thereof at the first Whitsunday or Martinmas next, & immediately following my decease, and the decease of my said Daughter, and other 5000 Merks within a year thereafter, and another 5000 Merks within a year after the second Term of Payment; and other 5000 Merks in compleat payment of the

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said

said whole Sum within a year after the third Term of Payment, with the Sum of 10 Merks for each 100 Merks of the said Principal Sum of liquidat Expenses in case of Failzie, and with the ordinar Annualrent of the said principal Sum so long as the same shall remain unpaid after the first Whitsunday or Martinmas following their decease: And further, wit ye me, without prejudice of the said 20000 Merks, to have Given, Assigned, and Disposed, as I by these presents Gift, Assign, and Dispose to the said C. my Daughter in Liferent, and to the Children Procreat, or that shall be Procreat betwixt her and the said — except the said D. and to their Heirs or Assigneys, and failzieing any of them by decease, to the surviving Children, their Heirs or Assigneys, which failzieing, to the said — their Father, his Heirs or Assigneys, secluding his Executors, the Sum of 10000 Merks Scots Money of principal, with certain liquidat Expenses specified in the Bond aftermentioned, and Annualrents of the said Principal Sum, from and after the first Whitsunday or Martinmas immediatly following my decease, when the same shall happen, contained in a Bond granted by — to me, my Heirs or Assigneys, of the date the — day of — and also the foresaid Bond it self, and all that has followad or may follow thereupon, with this expresse Provision and Condition alway: Likeas, It is hereby specially provided and declared, That the said Sum of 20000 Merks, nor this Sum of 10000 Merks, hereby
As

Assigned, shall noways be affected with, nor ly-
 able to the said ——— his Jus Mariti, nor to
 any Deeds contracted, or to be contracted, or
 done by him; And that it shall be lawful to my
 said Daughter, by her self alone, without his
 Consent, to uplift and Discharge the Annual-
 rent of the saids Sums, and apply the same to
 her own use as she shall think fitting during her
 Lifetime, in respect that the foresaid two Sums
 of 20000 Merks and 10000 Merks are freely
 gifted and bestowed by me upon her and her Chil-
 dren, only for the Love and Kindness which I
 have and bear to them; And for that effect, I
 have appointed the Annualrent of the saids Sums
 to be payed to her during her Lifetime to be
 disposed as she shall think fit, and the Fie to be-
 long to her other Children, in manner above-
 divided; which sailzieing, as said is: And it
 is likeways hereby provided and declared, That
 if the said C. my Daughter, shall through the
 death of the said ——— her Husband come to
 the Possession of her Jointure, in that case, the
 said D. his Daughter is immediatly thereafter
 to enter to the said 600 Merkt yearly, and the
 remainder of the said Annualrent of the said
 whole 20000 Merks is to belong to her other
 Children from that time furth: And I bind
 and oblige me, my Heirs and Successors to war-
 rand the foresaid Assignment to my said Daugh-
 ter and her Children, from my own proper Fact
 and Deed allenarly, and to deliver to her the
 Bond above-assigned to be keep'd by her for her

own and her Childrens use and behoof after my decease: And lastly, I declare that this shall be a valide Evident in favours of my said Daughter and her Children, which failzieing, as said is, albeit the same be lying in my own Custody, or in the keeping of any other Person undelivered to her the time of my decease, notwithstanding of whatsoever Act, Law or Practique made or to be made in the contrair, wherewith I for me and my Heirs by these Presents dispence for ever. Registration.

Of Bonds of Provision in Imple- ment of a Contract of Marri- age.

IN the former part you have the Stile of simple Bonds of Provision: Now, in this you are to know the Form of these which are in Implement of a Contract of Marriage, and they are in this or the like Stile, Be it known, &c. me A. Forasmuch as by the Contract of Marriage made at — upon the — day of — betwixt me on the one part, and — my Spouse, with Advice and Consent of — on the other part, for the Marriage then contracted, and thereafter Solemnized betwixt us, I bound and obliged me, and my Heirs, &c. to have made payment to the Children then to have been Procreated betwixt me and my said Spouse of the Sum of
60000

60000 Merks Money of this Realm, at the Terms, and upon the Conditions and Provisions following, viz. If there should happen to be more Children of the said Marriage than one Son, in that case the foresaid Sum was to be divided amongst them, in such Proportions as I should appoint in my own time; and if there should be but one Son of the foresaid Marriage, then the aforesaid Sum was to be restricted to 50000 Merks Money foresaid; and if there should be no Son, but Daughters, in that case, the foresaid Sum of 60000 Merks was to be restricted to the Sums following, to wit, if there were but one Daughter, to the Sum of 25000 Merks Money foresaid; and if there were two Daughters, to the Sum of 30000 Merks, and if there were three or more Daughters, to the Sum of 40000 Merks Money above-written, to be divided amongst them as I should appoint: Which Proportions and Sums above-written, I bound and obliged me and my foresaids, to pay to the Male Children to be gotten of the foresaid Marriage at the Age of Fourteen Years compleat, and to the Daughters at their Age of Twelve Years compleat: And for their Intertainment, Breeding, and Education yearly, after my Decease, I bound and obliged me, my Heirs and Successors foresaids, to pay to my saids Children the Sums of Money following, if there be one Child, the Sum of 600 Merks yearly, until the said Child attain the Age of six years; and if there be
two

two Children, the Sum of 800 Merks yearly; and if there be three or more Children, the Sum of 1000 Merks Money foresaid yearly, and ay and while the said Children attain to the Age of six years compleat, and from the Age of six Years until the Male Children attain the Age of Fourteen, and the Daughters Twelve, to make Payment of the following Sums for their Intertainment, Breeding, and Education, viz. 1200 Merks yearly for one Child, 1600 Merks yearly for two, and 2000 Merks yearly for three or more, to be payed at two Terms in the Year, Whitsunday & Martinmas by equal Portions, & the first Terms Payment to begin at Whitsunday or Martinmas next, and immediately following my Decease, for the half year preceeding, and so furth Termly thereafter, according to the obligement above-mentioned, till the saids Children should attain to their respective Ages of Twelve and Fourteen Years compleat, as said is, and after their attaining to the said Ages, to make payment to them of the Annualrent and Profit of the saids Sums and Portions yearly and termly, so long thereafter as the same shall remain unpaid, as the foresaid Contract Matrimonial proports: And now seeing it hath pleased GOD already to Bless me with three Children of the foresaid Marriage, B. C. and D. whom I am now resolved to Provide and Secure, according to my Obligements in the foresaid Contract; Therefore, in Corroboration thereof, and without Preju-

Prejudice or Derogation thereto, or to any Diligence competent to follow thereupon sed accumulando jura juribus, wit ye me to be bound and obliged: Likeas, I by these presents bind and oblige me, and my Heirs, &c. to make payment to the saids B. C. and D. &c. (here follows the Bond in common Form, according to the Agreement in the Contract.)

This Bond was in Implement of a Contract of a Second Marriage, the Land Estate of the Father being Inherited by a Son of the first Marriage, who was Heir presumptive.

Of Bonds *ad facta præstanda* Compound.

FROM what hath been said concerning Bonds simple for performance of Deeds simple, and from the Knowledge of the Nature of a Compound Writ, you may know how Bonds *ad facta præstanda* Compound, are formed; yet we shall for further Illustration, give you a few Examples of this kind in some remarkable Cases, very fit to be known. As,

1^{mo}. An Obligation to cause a person assign a Bond, *Be it known to all Men by these presents, me A. whereas B. has presently lent to me the Sum of ——— Scots Money, for which Sum there is a Bond granted to her by me,*

me, bearing Annualrent from this Day, and liquidat Expenses: And seeing that ——— are also to sign the same Bond, and therein become bound with me, but are not now in Town to subscribe the same, Therefore I bind and oblige me, my Heirs and Executors, betwixt the ——— day of ——— instant, to deliver to the said B. her Heirs or Assignneys, a Bond for the Sums above-mentioned, duely subscribed by me and the saids ——— before famous Witnesses, and to be Verbatim of the Tenor of the Bond now delivered for the said Sum, which is only subscribed by my self; and it is to be given back to me upon the delivery of the Bond subscribed by us all, and that under the Penalty of ——— Money foresaid; by and attour performing of the Premisses.

Otherways thus.

Be it known, &c. me A. whereas I have instantly received from B. the Sum of 1000 Merks Scots Money, which I have borrowed from him for the use and behoof of C. But seeing the said C. is not in this place to subscribe a Bond for the same, and that the said B. is content to accept of my Obligement under-written: Therefore, I bind and oblige me, my Heirs, Successors, and Executors, to deliver to the said B. a common Moveable Bond duely subscribed by the said C. for payment making to him, his Heirs or Assignneys, of the foresaid principal Sum, at the Feast and Term of ——— with the ordinary Annualrent thereof, from

from — during the not payment of the same, with 100 lib. Money foresaid of liquidat Expenses, and that betwixt and the — day of — next to come, he always upon my delivering to him the said Bond, being obliged to give up to me this my Obligation, Or otherways to make payment my self of the said Principal Sum and Annualrents upon the said — day of — and that under the Penalty of — Money foresaid in case of failzie, by and attour performance of the Premisses.

II. A Bond of Presentation, whereof there may be two kinds ; As first, for compearance before a Judge and *Judicio Sisti*, the Stile of which is giv'n before. The second sort is an Obligation to present a Debitor to the Prison, or otherways to pay the Debt ; The Stile whereof is thus,

A Bond of Presentation.

BE it known, &c. me A. Forasmuch as, B. by his Bond, &c. (here narrate the Bond) Whereupon the said C. raised Letters of Horning, and by vertue thereof caused charge the said B. to make payment to him of the Sums of Money, Principal, Annualrents, and Penalty above written ; And also purchased Letters of Caption, and by vertue thereof caused apprehend his Person : And now seing that at my earnest desire the said C. is not to put the foresaid Diligence to further Execution, but

is willing to permit the said B. to go about his lawful Affairs in Freedom, till the time after-specified, upon my granting the Bond under-written. Therefore, wit ye me to be bound and obliged: Likeas, I &c. to present the Person of the said B. to the said C. or to any having his Commission, at Edinburgh, in the House of — upon the 15th day of September next to come, betwixt the Hours of Ten and Eleven in the Forenoon, without longer delay, Fraud or Guile, then and there to be personally apprehended and disposed upon at the will and pleasure of the said C. or any having his Warrant and Commission, conform to the said Letters of Caption in all Points, and that in als good Condition as he presently is, without any Suspension, Protection, Cessio Bonorum, or other Ground and Warrant whatsoever that may stop, let, hinder, or impede the said C. his apprehending the Person of the said B. Incarcerating of him, or putting the said Letters of Caption to their full and final Execution in all Points, and that under the Penalty of — Scots Money in case of Failzie, by and attour Performance of the Premisses. Registration.

The Alternative of the Bond may be thus; Or otherways, at the said time and place to make due and thankful payment to the said C. and his foresaids, of the whole Sums of Money, Principal, Annualrents, and Expenses contained in the Bond and Diligence above-men-

mentioned, and due by vertue thereof, and that under the Penalty of — &c.

I have seen a Bond of Presentation subjoined to a Bond of Corroboration thus, — And in case punctual payment shall not be made of the said 1000 Merks, in that case, I A. do hereby bind and oblige me, &c. to present the Person of the said B. Prisoner within the Tolbooth of Edinburgh, from which he is now liberat with consent of the said — there to remain Prisoner at his instance, ay and while he fulfil to him the Command of the Letters of Horning whereupon the Caption is founded, and that without any Suspension, Protection, or any other Warrant, for Sisting Execution, or interrupting the Diligence at his instance against him; and if I shall fail in not presenting him to the said Tolbooth, in manner foresaid, upon or before the 15th of September next, then, and in these Cases, or either of them, I the said A. bind and oblige me, and my foresaids, to make payment to the said —, or to his above-specified, of the said Sum of 1000 Merks, betwixt and the 20 of September next to come, with the Sum of 100 lib. Money foresaid of Liquidat Expenses in case of Failzie, and Annualrents of the said principal Sum, so long as the same shall remain unpaid after the time foresaid. In this Case the Bond of Corroboration was granted by one, and the Bond of Presentation by another.

III. A Bond of Relief. Be it known, &c. me, A. Forasmuch as, B. and C. have by a Bond of the date, engaged themselves as Conjunct with me, for payment to-----of the Sum of 6000 lib. at the Term of-----in the year----- with 600 lib. Money foresaid of Liquidat Expenses in case of Failzie, and Annualrent from Martinmas in the year----- during the not Paymet, as the said Bond more fully bears: And seeing the said B. and C. became only obliged therein at my desire, the foresaid whole Sum of 6000 lib. being received by me, and applyed to my own proper use; So that in all Equity and Reason they ought to be Relieved thereof, and secured from any Prejudice they may sustain thereby: Therefore, wit ye me to be bound and obliged; Likeas, &c. me, my Heirs, Successors, and Executors, &c. to Warrant, Free, Relieve, and Skaitheless keep the said B. and C. their Heirs and Executors of the Bond above-mentioned, and of the whole Sums of Money, Principal, Annualrents, and Expenses above specified, contained therein, and of all Cost, Skaithe, Damage, Expenses and Interest that they or either of them, or their foresaids shall happen to sustain or incur there-through in any sort; and for that effect, at Whitsunday next, to make payment to the said -----of the foresaid principal Sum, with what Annualrents thereof shall be resting for the time, and to retire from him the Bond above-mentioned, and to deliver to them, and each of them, their Subscriptions therefrom, or otherways a sufficient Discharge thereof, and that under the Pain and Penalty of 600 lib. Scots Money to be payed by me to them in case of Failzie, by and attour fulfilling of the Premisses. Registration.

A Bond of Relief to a Cautioner in a Suspension. *Be it known, &c. me. A.* Forasmuch as, I was lately charged by vertue of Letters of Horning purchased against me at the instance of B. to make payment to him of the Sum of (as in the Charge.) And seeing, at my earnest Request and Desire C. is become Cautioner for me in the Suspension thereof, and that Equity and Reason requires, that he and his should be Freed, Relieved, and Skaithless kepted therein, and of all Danger that may follow to them thereby; Therefore, wit ye me to be bound and obliged: Likeas, &c. shall happen to sustain and incur there-through in any sort. Registration.

2 Another Bond of Relief in a Singular Case.

Be it known, &c. me A. Forasmuch as, &c. (here narrate the principal Bond.) And seeing, the said B, is become bound, and has engaged himself in the foresaid Debt, upon Consideration that he is resting to me the Sum of ——— And that it is intended, that what he shall pay thereof shall be allowed to him of the foresaid Debt, and that he shall be Discharged thereof pro tanto; Therefore, wit ye me to be bound and obliged: Likeas, &c. me my Heirs, Successors and Executors, in case the said B. shall make payment of the foresaid Sum, to Deduce, Allow, and Discharge as much of the first and readiest of the Money due by him to me; and which Discharge shall contain absolute War-

Warrantice, and all other necessar Clauses; And in case the said B. shall not at that time be Debitor to me, then and in that Case, I bind and oblige me, &c. to Free, Relieve, &c. in common form as above: And for his further Security thereanent, if he shall not be Debitor to me, as said is; I do hereby Consent that he take Assignment to the Debt wherein he stands bound for me, and to the Sums of Money contained therein, and to the Securities granted for the same upon my Estate, or otherwise, and that he use such Diligence as he shall think fit thereupon, ay and while he obtain Relief and payment, as said is. Registration.

IV. A Bond of Warrantice, when one having disposed Lands with Warrantice only from proper Fact and Deed, and thereafter upon another Agreement is to give Warrantice absolute, the Bond is thus.

Be it known, &c. me A. Forasmuch as (here the Disposition is narrated) and it being very just and reasonable that the said B. be secured in the Lands and others above-disposed, at least, in so far as may extend to the Sum of——which was truly payed by him to me, for the granting of the Rights and Disposition above-mentioned; Therefore, in Corroboration of the Clause of Warrantice contained in the foresaid Disposition, and without prejudice or Derogation thereto, or to any Diligence competent to follow thereupon, sed accumulando jura juribus, wit ye me to be bound and obliged:

Like-

Likeas, &c. to Warrant, Acquit, and Defend the Lands and others above-reherfed, contained in the foresaid Disposition granted by me to the said B. to be Free, Safe, and Sure, &c. (As in the Clause of Absolute Warrantice of a Disposition to be declared in that part which treats of Dispositions,) in time coming, excepting and reserving always from this present Warrantice, the foresaid Gift of Waird and Non-entry, which is assigned by me to the said B. and also excepting all bygone publick burdons, from which I shall not be obliged to warrant the saids Lands, and also excepting the Right and Wadset or Infestment of the Lands and others above-reherfed, granted to D. And further, with this Declaration, That if the Lands and others foresaids shall happen to be evicted from the said B. in that Case, all Action and Recourse at his instance against me upon the Clause of Warrantice contained herein, shall be, and hereby is restricted to the said Sum of—— payed by him to me for granting thereof, with the Annualrent of the said Sum, from and after the Eviction, during the not payment thereof, or till the said B. and his foresaids be re-entered to the Possession thereof, the said B. and his foresaids making Intimation to me and my foresaids of any action that shall be intended for Eviction of the saids Lands, or any Annualrent or yearly Duty furth therof, and that before Litiscontestation.

V. A Bond of Relief and Warrantice to a Person who was owing Money to another who was Debitor to the granter of this Bond, and who had made payment of the Sums upon a Decreet of Furthcoming obtained against him, the Sums being not only Arrested by others, but also assign'd by the Creditor; And it being agreed, that the receiver of the Money should warrant the payment, The Bond is in this Form, *Be it known, &c. me A.* Forasmuch as, *B.* did Arrest certain Sums of Money in the hands of *C.* alledged due by him to *D.* to have remained under Arrestment till the Debt mentioned, in the Copy, alledged due by the said *D.* to the said *B.* should be payed: As also, the said *D.* did assign to *F.* certain Sums of Money which *D.* pretended to be due to him by the said *C.* and which Assignment was intimat to him; Likeas, I have latly recovered Decreet against the said *C.* for payment of certain Parts and Portions therein-mentioned of the principal Sum of 20000 lib. and Annualrents thereof contained in a Bond granted by the said *C.* to *E.* dated——— And seing the said *C.* at his payment to me of the Sums whereunto I was preferred by the foresaid Decreet, desired, not only a Discharge with Absolute Warrantice, which accordingly I have granted upon the Day and Date of these Presents; but also, to be secured from the foresaid Arrestment and Assignment: Therefore, wit ye me as Principal, and *G.* as Cauti-
 ner, to be bound and obliged: Likeas, &c. to War-
 rant,

rant, Relieve, and Skaithless keep the said C. his Heirs and Executors, from all Trouble and Action that shall happen to be moved and intended against him upon the foresaid Arrestment or Assignation, and from all Coast, Skaith, Damage, Expenses, and Interest that he or his fore-saids shall happen to sustain and incur there-through, or in defending against the same, and to refund to him any Expenses he or his fore-saids shall sustain thereanent. Follows a Bond of Relief to the Cautioner. Registration.

The Clause of Relief subjoin'd to Bonds, is to be found in Page 48.

1. When in the principal Bond there is a Clause of Relief, the Bond of Relief which is to be granted a part, ought to be conceiv'd in Corroboration of that Clause, and is thus express'd, *Therefore in Corroboration of the foresaid Clause of Relief, contained in the foresaid Bond, and without Prejudice or Derogation thereto, or to any Diligence competent to follow thereupon, sed accumulando, &c. wit ye me to be bound and obliged : Likewise, &c.*

2. In Bonds of Relief wherein for further Security, there is an Assignation of any thing, or an Obligment to dispoise Lands for the Cautioners Relief, this Clause and Provision is most commonly adjoined, *Viz. That so soon as the said B. (Cautioner) shall be fully Relieved and Freed of the foresaid Cautionry, and that I shall deliver to him a valid*

Discharge thereof, then and immediatly thereafter, not only this Assignation, but also the foresaid Infestment of Relief, which I am hereby obliged to grant, shall be null and void, as if it had not been made.

3. One having bought Lands, which were burden'd with Wadsets, gives to the Disponer a Bond to Relieve him of these Wadsets, and to pay the Sums due thereby. The Order and Form of which Bond is, to narrate the Disposition and then to subsume, *That albeit the said B. has granted to me a full Discharge of the Sum of 80000 lib. as the Value, Worth, and Price of the saids Lands, yet nevertheless, true it is, and of Verity, that the said price is to be employed and applyed in manner following, viz. the Sum of — thereof, is to be applyed for purging of the Wadsets and other Heretable Securities after-mentioned, affecting the saids Lands, viz. 4600 Merks thereof to the Heirs and Successors of — for purging of a Wadset he had upon the Lands of — and so furth with the rest of the Wadsets ; Therefore, he bound him, &c. to Warrant and Relieve the said B. of all Skaith that he or his foresaids shall happen to sustain there-through, and for that effect to make payment to the said Persons of the respective Sums above-specified, each of them for their own parts, as is above-divided, and to retire from them sufficient Discharges and Exonerations to the said B. of the same Sums, as to all personal Execution*

tion that may be used against him or his foresaids thereupon, and as to all real Execution that may be used against any Estate Heretable or Moveable belonging, or that shall happen to belong to him or his foresaids, without prejudice nevertheless to me to take Assignations and Dispositions to the saids Sums, and to retain the Wadset due to myself, in so far as I may be thereby secured in the Lands and others foresaids particularly disposed by the said B. to me, and to the Lands disposed in Warrandice in case of Eviction of the principal Lands: And it is hereby declared, that it shall be Leisum and lawful to me to make use of the Procefs raised at the instance of the said ——— against the Wadsetters, for causing them Compt and Reckon as to the Superplus of the Rents and Duties of the respective Lands Wadset to them, more than pays the Interest of their Principal Sums, as I bind and oblige me to relieve the said B. and his foresaids of the Annualrents of all the saids Principal Sums, in so far as he may be lyable to the Wadsetters and others for the same, from and after the Term of Whitsunday in this instant year, and in all time coming. To this was subjoined an Obligement to pay the remainder of the price with the Annualrent in forma Communi.

The Clause above-mentioned declaring it lawful to redeem the Wadsets, is not a sufficient Title for him to pursue for Redemption, but to Corroborat this, he got

an Assignment to the Reversion of these Wadsets, with a Power to that Effect.

4. An Heretable Bond of Relief is of a different Tenor from an Heretable Bond of borrowed Money, as will appear from comparing the two. The Heretable Bond of Relief is of the Tenor following, and I make it in a case, where, in the Original Bond, the Principal was in effect only Cautioner, albeit he gave a general Obligement of Relief, so that now the case is ranvers'd, all which is in this Form, *Be it known, &c.*
me A. Forasmuch as (here narrate the Bond) And seeing the said B. did only become Principal in the said Bond at my desire, and that the foresaid whole Sum of Ten Thousand Merks was received by me, and applyed to my own proper use, notwithstanding of the Clause of Relief contained in the said Bond, where, through all Equity and Reason, the said B. ought to be secured from all Damage and Prejudice that he may sustain thereby; Therefore wit ye me not only to have exonered and discharged: Likeas, I by these presents Exoner and simply Discharge the said B. and his Heirs and Executors of the Clause of Relief granted by him to me contained in the end of the foresaid Bond, made by him as Principal, and me as Cautioner to the said C. and of all Action and Execution competent, or that may be competent to me against him by vertue thereof; But also, to be bound
 and

and obliged: Likeas, I by these presents bind and oblige me my Heirs, &c. to Warrant, &c. the said B. his Heirs and Executors of the Bond above-mentioned, and Sums of Money Principal, Annualrent, and Expenses above-specified, therein contained, and of all Cost, Skaitb, Damage, Expenses, and Interest that he or his foresaids shall happen to sustain or incur there-through in any sort; And further, to be bound and obliged: Likeas, I for the said B. his further Relief and better Security thereon, by these presents bind and oblige me, my Heirs and Successors, upon my own proper Charges and Expenses, and by my own Moyen to duly and lawfully Infeft and Sease, with all convenient Diligence, the said B. his Heirs and Assigneys foresaids, heretablie, under the Provisions and Conditions after-mentioned, in all and whole the Lands and Barony of——with the Tower, Fortalice, Manour Place, Houses, Biggings, Yards, Orchards; Parts, Pendicles, and Pertinents thereof, as the same are designed and denominat in my Infeftments thereof, lying within the Sheriffdom of——and that in special Clause of Warrantice, Security and Relief to the said B. and his foresaids, of the Sums above-mentioned, contained in the Bond above-written, granted by him and me, to the said C. So that if it shall happen him or his foresaids to be distressed for the same, or any part thereof, then, and immediatly thereafter they

they shall have full and free Ingress, Regress, and Access to the Lands, Barony and others above-mentioned with the Pertinents, Setting, and raising thereof, inputting or outputting of the Tennents, and uplifting the Mails and Duties of the same, at least of so much thereof, as shall be correspondent to the said distress, when it shall happen, and to the Expense and Damage that shall happen to be sustained thereby, to be from that time forth peaceably possess by him and his foresaids, ay and while they be sufficiently freed and relieved of the said Debt, and that by two several Infeftments in due and competent form, the one thereof to be holden of me and my Heirs and Successors, either Blench or Fen, for payment of such Blench and Fen Duties as best shall subsist with the Laws of this Realm, and the other of the foresaids Infeftments, to be holden from me and my foresaids of my immediat lawful Superiors of the Lands, Barony, and others above-written, sicklike, and as freely in all respects, as I presently hold the same my self, and that either by Resignation or Confirmation, as best shall please the said B. and his foresaids: And sicklike, I bind and oblige me and my foresaids, not only to procure and obtain the Superiors Consent to the receiving the said Resignation, or granting the said Confirmation, but also to pass the Infeftment therupon, and to expend all other incident Charges for persuting thereof: And for expending

ing the said Infeſtment by Reſignation, I by theſe preſents make and conſtitute, &c. in the hands, &c. In favours, &c. in due and competent Form, Providing always: Likeas, it is hereby expreſſy provided, and declared, and appointed to be contained in the Infeſtment to follow hereupon, that the ſaid B. his entry to the Lands and Barony above-mentioned, and the uplifting of the Mails and Duties thereof, by vertue of this preſent Bond, and the Infeſtment to follow hereupon, ſhall ſtand Suspended, until ſuch time as he or they be diſtreſt for the Debt abovementioned, due to the ſaid C, or any part thereof, to be bruiked and joyſed by him and his foreſaids from thence furth eſſeirand, and answerable to the diſtreſs, and ay & while he be fully freed and relieved of the ſaid Bond and Debt above-mentioned, due to the ſaid C, and to be payed of all Damnages, Expenses, and Intereſt that he or they ſhall happen to ſuſtain or incur there-through, and that either by me or my Heirs, or by his Intromiſſion with the Rents, Duties and Casualties of the Lands, Barony, and others above-mentioned, And that then, and immediatly thereafter, the ſaid B. and his foreſaids ſhall be holden to renunce and over-give to, and in favours of me and my foreſaids, the whole Lands and others above-rehearſt omni habili modo quo de jure, with Warrantice from their own proper Facts and Deeds allenarly, and thereupon Acts, &c. (Clause of Warrantice as in a common Heretable Bond.) And moreover,

I by this presents, desire and require you, &c. (Precept of Seasin in the Lands in common form.) conform to these presents and Insestments to follow hereupon, or either of them, under the Provisions and Conditions always above-mentioned, which are holden as here repeated and exprest, and that this on noways ye leave undone. The which to do, &c.

Of Back-bonds.

A Back-bond is an Obligation by one who acquires a Right or Obligation, given to the Person who grants the said Right, and which Backbond is relative to the Subject contained in the Original Bond or Right, so called, as it were a Bond given back again, for example, when one gets an Assignment in Trust, it is fit the same be acknowledged, and the Trustie or Assigney be bound to make faithful Compt. The which Bond is thus, *Be it known, &c. me A. Forasmuch as, albeit B, by his Assignment of the date——hath Assigned to me, &c. (here narrate the Assignment to the Bond, and in the body of the Assignment make mention of the Bond in the neatest Form, then say,) yet nevertheless, I by these presents declare, that my Name is insert in the foresaid Assignment in Trust and for the behoof of the said B. himself, to the effect that Diligence may be done in my Name for obtaining pay-*

payment of the Sums thereby assigned: And therefore, I bind and oblige me, my Heirs, Successors, and Executors to denude my self of the said Debts, and Grounds thereof, in favours of the said B. his Heirs and Donators, including his Executors: Likeas, I by these presents Repone, Restore, and Retrocess him and his foresaids to his own full Right and Place of the Premisses, and I Assign, Transfer and Dispose to him and them, all Decrees and other Diligence that shall be done thereupon in my Name, and I shall reiterate and renew this present Retrocession and Translation whensoever I shall be desired, providing I be no further bound therein, but with Warrantice from my own proper Fact and Deed allenarly, and that the Writes to be granted thereanent be formed and expedite upon the proper Charges and Expenses of the said B. and his Foresaids, and if I shall recover payment of any part of the Sums above-mentioned, Assigned by the said B. to me, in that case, I bind and oblige me and my foresaids to make Compt, Reckoning and Payment to him and his Foresaids thereof, deducing only such Expenses as I shall depurse in the said Matter.

Another Form of a Back-bond by one in whose Favours an Assignment is granted in Trust for doing Diligence. Be it known, &c. me A. Forasmuch as (here narrate the Bond of Borrowed Money, and the Assignment thereto) And seing I am only in-
Q
trusted

trusted by the said B. with the Assignment
 abovementioned, to the effect I may obtain an
 Adjudication at my instance against D. his
 Heirs, &c. of the Lands and Estate which per-
 tained to ——— his Father, as well for the
 Sums of Money above-written, assigned to me as
 for other Sums resting by the said ——— to me, and
 his Creditors, from whom I have Right;
 Therefore, wit ye me to be bound and obliged.
 Likeas, &c. me, my Heirs, Successors and
 Executors, to use all legal Diligence for obtain-
 ing a Decree of Adjudication of the said ———
 his Lands and Estate, for the Sums, Annual-
 rents, and the other Debts resting by him,
 whereunto I have Right, and upon the foresaid
 Adjudication to use all Diligence for procuring
 me to be Infeft and Seased in the said ——— his
 Land and Estate: Likeas, I now, as if I
 were Infeft and Seased therein, and then as
 now bind and oblige me and my foresaids,
 to make just Compt, Reckoning, and payment to
 the said B. his Heirs, or Assignees, seclading
 his Executors of a proportional part effeiring
 to his Debt, of the Mails, Profits, and Duties
 of the Lands, Heretage, and others to be Ap-
 prysed at my instance, as said is, which shall
 be intrometted with by me, or any others by my
 Warrant by vertue of the foresaid Adjudicati-
 on, And sicklike to denude me of the foresaid
 Adjudication, and whole Grounds and War-
 rands thereof, Infeftments to follow thereupon,
 and

and Sums of Money to be contained therein with all that may follow upon the same to and in favours of the said B. and his foresaids, lawfully and effectually omni habili modo quo de jure, in so far as the same extends, or may be extended to the Sums of Money above-rehearsed, assigned by him to me, as said is, and to a proportional part of the Expenses that shall be depursed in the said matter, and Annualrent thereof from the time of the Depursement of the same during the not payment thereof, with power to the said B. and his foresaids to Ask, Receive, Intromet with, and uplift his proportional part of the Rents, Profits and Duties of the Lands and others to be Adjudged, as said is, and generally to do all other things thereanent sicklike, and as freely in all respects as I may then do my self: It is always hereby provided and declared, that the Writs to be made concerning the Premisses, shall be formed, past, and exped upon the proper Charges and Expenses of the said B. and his foresaids; and that I nor my foresaids shall not be obliged in Warrantice thereof, farther than from our own proper Facts and Deeds allenary: As also, I bind and oblige me and my foresaids, to exhibit and produce before any Judge comperent within this Kingdom, the foresaid Decreet of Adjudication, with the whole Grounds and Warrants thereof, and the Infestments and Seafins to follow thereupon in my Name, to the effect so many thereof as shall be needful, may be transumed, and the

authentick Transumps or doubles of the same delivered to the said B. or his foresaids, upon his own proper Charges and Expenses, to be kept and used by them at their pleasure, and to make the principal Writes so to be transumed furthcoming to the said B. or his foresaids, when ever he or they shall have to do therewith, in all Actions and Causes wherein the said Transumps will not be sufficient : It is likewise hereby provided, that if the said B. shall failzie in contributing or paying to me or my foresaids of the proportional part of the Expenses to be debursed in prosecution of the Premisses when ever I shall demand the same ; then and in that case, I shall not be holden to fulfil this present Backbond to the said B. and his foresaids, until he or they make payment to me or my foresaids of the proportional part of the said Charges and Expenses, conform to an Account thereof. Registration.

Next, when a Factor is Constitute, he is in some sort a Trustie ; and tho' a Factory of its own Nature importin Law an Obligation to make faithful Compt, Reckoning and Payment ; yet seing the same cannot be compassed but by an Action which requires extrinsick Probation, and upon that account an unjust Factor may prejudice by a shifting Defence, his Constituent ; To avoid this Inconvenience, a Backbond relative to the Factory is delivered, which may be formed in this or the like Stile, *Be it known,*
 &c.

&c. (here narrate the Factory) And it be-
 ing Just and Reasonable that the said B. be
 sufficiently secured, that I shall make a full
 Compt to him of my Introumissions with his Mo-
 ney which I am impowered by the said Factory
 to uplift, and that I shall do Diligence for re-
 covering thereof, in manner after-mentioned;
 Therefore, wit ye me to be bound and oblig-
 ed: Likeas, &c. that I shall make just Compt,
 Reckoning, and Payment to the said B. his
 Heirs, Executors, or Assigneys of the whole
 Sums of Money, Principal, Annualrents and
 Penalty contained in a particular Inventar
 thereof subscribed by him and me, at least to use
 all legal Diligence for recovering payment there-
 of, and that under the Penalty of ——— Scots
 Money, to be payed by me to him in case of
 Failzie, by and attour performance of the Pre-
 misses, deducing always, and allowing to me the
 Sum of ——— Scots of Fie for my being Factor,
 and any necessary Expenses I shall be at in re-
 ceiving and uplifting the foresaid Sums, and in
 doing Diligence therefore.

Bonds of this sort are in use to have a
 Cautioner, which is mentioned thus, ———
 Therefore, wit ye me as Principal, and C.
 as Cautioner and Soverty for and with me to be
 bound, &c.

What is said of Factors concerns likewise
 Chamberlains, whose Backbond to their
 Masters is thus, Be it known, &c. me A.
 Chamberlain to B. Forasmuch as the said B.
 by

by a Letter of Factory and Chamberlainry of the date of these presents, has made and Constituted me his Factor and Chamberlain for uplifting and intrometting with his Rents of his Lands and Baronies of ——— for the Cropt and Tear of of God 1715, as in the said Letter of Factory and Chamberlainry at more length is expressed; And it being reasonable that he be secured concerning my being comptable for the Years Rent above-written, Therefore in Corroboration of the Provision specified in the end of the said Factory, and without Prejudice and Derogation thereto in any sort, sed accumulando jura juri- bus, wit ye me to be bound and obliged; Likeas, &c. to make just Compt, Reckoning, and payment to the said B. his Heirs or Assignies of my whole Intromissions with the Rents, Services, and Duties of his Estate, and that for the foresaid Cropt 1715, and thereafter, if he shall continue me his Chamberlain any longer, and that yearly, termly, or oftner as I shall be required; As also, to use Diligence for recovering the saids Rents, Farmes and Duties, deducing always and allowing to me the Sum of 400 Merks Scots of Fie, for my being Factor, and my necessary Expenses I shall be at in going and receiving the Victual and Money Rent, and in selling and delivering the same out again; and in Satisfaction of my Tronble and Expenses in doing therof, allowing also to me that House in ——— presently possessed by my self and Family, with Grass for an Cow

Cow and Horse to be pastured, with the said ~~at~~
his own Kyne and Horses in Summer, and to
have Fodder for them in Winter. Registrati-
on.

The Bond may likewise be thus, To
Compt for the whole Mails, Farms, Rigns,
Customs, Casualties, Profits and Duties of the
foresaid Lands and Barony contained in a par-
ticular Rental thereof, subscribed by the Ma-
ster and Factor, and to make this Compt yearly,
termly, or oftner, as the Factor shall be requir-
ed, and under a certain liquidat Penalty, by and
attour performance, deducing always the Feu-
duties, Minister and School-Masters Stipends,
with such publick burdens as are in use to be
payed by the Heretor, and the Factors necessary
Expenses in uplifting the same.

There is no Contract or Conveyance that
concerns any Subject or Right wherein a
Backbond may not be interponed, which,
from what is here set down, may easily be
formed, according to the Paction and Pur-
poses of Parties.

Of Bonds of Tailzie.

A Bond of Tailzie is one of these which
fall under the Class of Bonds for
performing of Deeds, the Granter in
effect is both Debitor, or Obligant, and
Creditor : We are not here to treat of
their

their Efficacy and obligatory Force; nor of all the Clauses and Provisions proper to be insert in a Tailzie, which alone would make a large Treatise; At this time you shall have the Form of the Bond, and place pointed out where the Provisions of Tailzie are insert, *Be it known, &c. me A. Heretable Proprietar of the Lands, Baronies and others aftermentioned, for diverse good Causes and Considerations moving me, and especially for the continuance of my Estate with my own Children and Posterity, in the Name of ——— To be bound and obliged: Likeas, I, &c. my Heirs as well Male, &c. conjunctly and severally, Renouncing, &c. to make due and Lawful Resignation of my Lands and Estate aftermentioned, presently pertaining and belonging to me, or which hereafter shall pertain and be acquired by me at any time of my life, in favours of B. my Son, and Heirs Male lawfully Procreat of his own Body, which failzieing, in Favours of my other Heirs of Tailzie and Provision aftermentioned, under the Reservations and Provisions, Qualifications and Conditions always after-specified; And for that effect, wit ye me to have made constitute and ordained, &c. to resign all and hail (here the Lands were particularly named and designed) and all and whatsoever Lands, Baronies, Patronages, Thyces, Milns, Woods, Fishings, Annualrents, Towers, Fortilaces, Dovecats, and other Heretage whatsoever*

soever presently pertaining and belonging to me, for my self as Heir, or Apparent Heir to any of my Predecessors, or which I shall happen to acquire at any time of my life, dispensing with the generality, and admitting the same to be as valid and sufficient, as if the Lands and others generally above-mentioned were particularly designed and exprest, together with all Right, &c. In the hands, &c. In favours, &c. (here the Heirs of Tailzie are exprest, and the Provisions and Conditions of the Tailzie, which are according to the Will and Pleasure of the Party) and thereupon Acts, &c. And further, wit ye me to have assigned, Transferred, and Disposed to the said B. my Son, and his foresaids, which fallzieing, as said is, under the Reservations above-exprest, all and whatsoever Bonds, Obligations, Dispositions, Charters, Precepts and Instruments of Seasin, Procuratories, and Instruments of Resignation, Dispositions and Adjudications, Apprysings, Tacks, Assedations, Decreets of platt Prorogations, Reversions, Instruments and orders of Redemption, Declarators obtained or depending thereupon, Letters and Executions of Inhibitions and Registration thereof, and other Writs, Rights, Evidents, and Securities whatsoever, made and granted to me, or that shall be conceived in my favours at the time of my decease, of and concerning the Lands, Baronies, Milns, Woods, Fishings, and others particularly and generally above-mentioned, or Teinds,

Parsonage, or Viccarage thereof, or the Annuity of the saids Teinds, and all Sums of Money, Principal, Annualrents, and Penalties contained in the said Bonds, Obligations, Wadsets, Adjudications, Apprysings, and others foresaid, or due by vertue thereof, dispensing with the Generality, And all Action, Instance, and Execution competent or that may be competent to me by vertue thereof, Surrogating and Substituting the said B. my Son, and his foresaid, which failzieing, as said is, under the Reservations, &c. above-rehears'd in my full Right and place of the Premisses; And I declare that this shall be a valid Evident in Favours of my said Son and his foresaid, which failzieing, as said is, if it be not altered by me in my own time, albeit it be lying in my own Custody the time of my decease undelivered to him, or to any in his Name, notwithstanding of any Acts, Laws, Practique, made or to be made in the contrair, wherewith I for me and my Heirs by these presents dispence, And I bind and oblige me and my foresaid, to reitcrat and renew these presents, and to expedie Infeſtments thereupon, and to grant such particular Rights and Conveyances as shall be requisit for a legal establishment of a Right, conform to the Substitution and Provisions herein contained.

Bonds which oblige both for payment of Money and performance of Deeds, may be modelled out of a Composition of the Bonds
of

of both sorts, here treated of; However, the following Bond may serve for an Example.

Bond by a Vassal to his Superior for payment of the Feu-duties, and for performing of the Services contained in the Reddendo of his Charter.

BE it known, &c. me A. for my self, and taking burden upon me for B. my Spouse ——— to whom, and in whose Favours the Charter after-mentioned is granted, Forasmuch as a Noble and Potent Lord C. hath by a Charter of the date ——— granted and Disposed to the said B. her Heirs and Assignes whatsoever, all and whole (here mention the Lands verbatim as in the Charter) to be holden of the said Noble Lord during his Lifetime, and after his decease of ——— his Son and his Heirs and Successors therein specified, for payment yearly of the Feu-duties after-mentioned, viz. (here mention the Feu-duties and other Payments and Services to which the Vassal is obliged particularly, and verbatim, as they are in the Reddendo of this new Charter; which if it be general, let all the Services and others to which the Vassal is lyable be taken out of the old Charter, and insert expressly and distinctly herein) And it being just and reasonable that the said C. and his said Son be se-

cured to their own Satisfaction, in the payment of the foresaid Feu-duty and fulfilling of the Reddendo of the foresaid Charter; Therefore, in Corroboration thereof, and without prejudice or Derogation thereto, or to any Diligence competent to follow thereupon, sed accumulando jura juribus, wit ye me the said A. to be bound and obliged: Likeas, I by these presents bind and oblige me, my Heirs and Successors whatsoever, conjunctly and severally to make due and thankful payment to the said C. during all the days of his Life, and to the said — his Son, and his Heirs after his decease of the Feuduties above-mentioned, termly as they fall due, and of the said Services as they shall be required, beginning the first Terms payment at Whitsunday next to come, in the year of God 1715; and Termly thereafter at the Terms above-specified by equal Portions in all time coming, with the Sum of Ten Merks Money foresaid of liquidat Expenses for each Terms Failzie toties quoties: And also, that the said B. her Heirs and Successors succeeding in the Right of the foresaid Lands, shall renew this Obligement from time to time at the Entry and Succession of every Heir and Successor, under the Penalty above-specified. Registration.

Having Treated of several sorts of Compound Bonds, which are of their own Nature Original or principal; It remains that for compleating this part which relates

to Bonds, we Treat of Bonds of Corroboration.

Of Bonds of Corroboration.

A Bond of Corroboration besides the *Obligatory Clause* which it has in common with a simple Bond, has a Narrative, wherein the Original Obligation, and what has followed on it, is Narrated fully. 2. *The Subsumption*, which is, that the Creditor is content to supercede payment till a further Term, upon his getting a Corroborative Security in manner thereafter mentioned. It may be called the Cause of the Bond, and the Form of it is various, as shall be shown 3. *The Inference* from these Premises, namely the Obligation it self, *Therefore wit ye me to bound and obliged, &c.* The Stile of this is uniform, as will appear from the Examples of the various Cases here set down. The specifick difference of the stile of a Bond of Corroboration from another Bond or any other Writ, consists in the Subsumtion and Inference. For the Narrative may be premis'd to Writs of several sorts and of different purposes, as to an Assignment, or to a Discharge.

Bonds of Corroboration are divided into as many species as Original Bonds are, and besides may be considered in these different Forms. As I. with respect to the Creditor,

tor, it is granted to the Original Creditor himself or to his Heir or Executor, or to his Assigney. II. With respect to the Debitor, it is granted by the Debitor himself, his Heir or Executor, or Successor lucrative, who is bound to pay this Debt, and all these either by them self alone, or with a Cautioner, one or many. And III. With respect to the Form, it is a simple Corroboration without any Addition or Augmentation of the former Bond, or with Augmentation arising on sundry Accounts, as the Addition of a Cautioner, or a real Security. 2. The Accumulation of the bygone Annualrents into one Sum, and making them with the former Principal to bear Annualrent. 3. The advancing and lending of a new Sum. And the variety in Bonds of Corroboration may proceed from any One, or Two, or from all these Causes jointly.

The Form and Stile of a Bond of Corroboration by the Original Debitor to the Creditor himself. In the most simple Form, is thus, *Be it known to all Men by these present Letters, me A. Forasmuch as, I by my Bond, &c. (here narrate the Bond) And seing the said B. has condescended at my request to delay the payment of the said 12000 lib. till Whitsunday next, upon my granting the obligation underwritten: Therefore, in Corroboration of the Bond above-mentioned, and without Prejudice or Derogation thereto, or to any Diligence*

that

that has followed or competent to follow thereupon, sed accumulando jura juribus, wit ye me to be bound and obliged: Likeas, I by these presents bind and oblige me, my Heirs, Successors, Executors, and Intrometters with my Goods and Gear whatsoever, conjunctly and severally, to make due and thankful payment to the said B. his Heirs or Assigneys, secluding his Executors, of the foresaid principal Sum of 12000 lib. with the whole bygone Annualrents thereof then resting at the Term of Payment after-mentioned, and that betwixt the Date hereof and the Term of Martinmas next to come, in the Year 1715 without longer delay, with the Sum of 1200 Merks, Money foresaid, of liquidate Expences in case of Failzie, together also with the ordinary Annualrent of the said principal Sum, conform to the Act of Parliament, &c. as in a simple Bond.

If Diligence has been done upon the Original Bond, it ought to be Narrated, and the Corroborative Clause ought to be in this or the like Form, Therefore in Corroboration of the foresaid Registred Bond and Letters of Horning raised thereupon, and Gift of Escheat above-mentioned, and without Prejudice or Derogation thereto, &c. If there be Annualrents due, which at granting the Corroboration are not payed, the Subsumtion and Obligment is thus, And seing the said B. is content at my earnest desire, and upon my granting the Corroboration under-written, to
su-

superceed the payment of the said principal Sum and Annualrents thereof resting unpaid, till the time of payment after-mentioned, Therefore ——— to pay ——— the foresaid principal Sum of ——— and the whole bygone Annualrents thereof resting unpaid since the Term of ——— and that betwixt the Date ——— with Annualrent for the said principal Sum since the Term of ——— and in time coming, &c.

But if the bygone Annualrents are to be accumulated and added to the Principal; the Cause of granting the Bond, is in this or the like Stile, *And now seeing that the foresaid principal Sum is yet resting, with the Annualrent thereof above-specified of the foresaid Bond, which principal Sum, with the Annualrent thereof, to the Term of ——— last bypast, being all compted together, extends in whole to the Sum of ——— Money, above-written, and that Equity and Reason requiring that the said B. should be further secured for the same Sums, Therefore, &c. And the Obligement bears, To pay the whole accumulat Sum, with the Annualrents thereof.*

In all Bonds of Corroboration, it is usual and necessary, to the Obligement to pay Annualrent after the Term of payment, to subjoin this Clause, *without prejudice of suing Execution hereupon, or upon the said other Bond, or both, without Requisition. And if there be any other Writ or Security belides the*

the Original Bond prior to this Corroboration, let it be *without prejudice to it likewise*. If Diligence has been used on any of the antecedent Securities, the Clause is thus, *without prejudice, &c. or to prosecute the Diligence already done, or to use all or any of the said ways of Execution till he obtain payment, and that without Requisition.*

If the Bond of Corroboration be granted to the Heir or Executor of the Original Creditor after the first Bond is narrated, you make mention of the Service, or of the confirm'd Testament; and if a Decreet has followed on these, you narrate the Decreet also, and in the Subsumption and Obligation mention the Name of the Heir or Executor simply, as if he had been the Original Creditor, and will not differ in the Stile from that of the Bond above set down.

If the Corroboration be to an Assigney, then the Assignment is narrated, and the cause of granting the Bond of Corroboration and Obligation uses to be thus, *And seeing the said B. did accept of the foresaid Assignment to these two Bonds at our desire, and upon our promise of granting to him the Corroboration after-specified. Therefore, &c. or in this manner, And seeing the said B. did at our earnest desire, make payment of the whole principal Sums contained in the three Bonds above-mentioned, granted to the said D. ex-*
S
tending

tending to 5000 lib. of principal Sums, and did take Assignations thereto; As also, he condescended at our request to superceed and continue the same till the Term of payment after-mentioned, where-through in all Equity and Reason he ought to be secured thereanent; Therefore, and in Corroboration of the three Bonds above-specified, granted to the said D. with the Assignation made to the said B. thereof, and without Prejudice or Derogation thereto, &c.

When Bonds granted by Defunct Persons, are Corroborated by Persons made lyable in Law to pay the Debt, as by the Heir or Executor, their Relation to the principal Debitor should be insinuated in the Corroboration, and this is commonly done by an Additional Designation, from which one will easily conceive the Reason why that Person grants the Corroboration, as when a Bond is Corroborated by an Executor, the Additional Designation is thus—*Me A. Executor Nominated and Confirmed to the deceast B.* After which the Bond is narrated, and the Stile of the Corroboration goes on in common form. The same may be said of an Heir Served and Retoured.

It sometime happens that the Bond of Corroboration is granted by one who had no Relation to the Original Debitor, wherefore in the Subsumtion, the Cause or Reason

son of granting is expressed in this or the like manner, *And seeing the said D. did advance the foresaid principal Sum to the said B. upon the foresaid Security, and upon my promise to give and grant my Bond of Corroboration, after-specified; Therefore, &c.*

When more Money is lent by the Creditor in the original Bond, to the Debtor, or his Heirs, and that both that and the former Debt are to be accumulated in one Sum, and put in one Bond, this uses to be done by a Bond of Corroboration, wherein the former Obligation is narrated, and the Subsumtiou is the same, as is before-mentioned, so as either you accumulate the by-gone Annualrents or not, and then you subjoin: *And also, seeing the said B. has presently advanced and payed to me the Sum of ——— wherewith I hold me well contented and satisfied, and that Equity and Reason requiring that he should be secured for the same, and also for the Sums above-mentioned, extending in the whole to the Sum of ——— Therefore, &c.* To pay the foresaid whole extended principal Sum of ———

Bonds of Corroboration may be by themselves, or join'd with Writs of another kind; As for Example, Bonds of Corroboration may be in Contracts or Agreements, and Assignations, &c. I shall here set down a Bond of Corroboration and a Ratification, in

S 2

gross'd

gross'd in one Write, from which you may take an Idea of all others, and know how to make the like Composition.

A Bond of Corroboration and Ratification, by a Son, of a Contract and Agreement made by the Father.

BE it known, &c. *Me A. Forasmuch as* (here narrate the Contract) *And I being very well satisfied with the foresaid Contract and Agreement, and most willing to Ratify and Corroborate the same: Therefore, wit ye me, not only to have Ratified and approved: Likeas, I by these presents for all Right that I now have, or shall afterward fall or accrue to me, Ratify and Approve the Contract and Agreement above-mentioned, in the whole Heads, Articles, and Clauses thereof, conceived, or that may be interpret in favours of the said B. and her foresaids, dispensing with the generality of this Ratification, and admitting the same to be as valid and sufficient, as if the same had been verbatim insert and ingrossed herein: And farther, in Corroboration of the same Contract, and without prejudice or derogation thereunto, or to any Diligence competent to follow thereupon, sed accumulando jura juribus; Wit ye me, to be bound and obliged, as I by these presents bind and oblige me, my Heirs, as well Male, &c. conjunctly and severally with*
my

my said Father, and his said Cautioners, Renouncing the benefit of the order of discussing the saids Heirs) to make due and thankful payment to the said B. her Heirs, Executors or Assignees, of the foresaid yearly Annuity of 1450 Merks at the said two Terms in the Year, Whitsunday and Martinmas, by equal Portions, beginning the first Terms payment thereof at ~~the~~ next to come, for what shall be then due, and so furth Yearly and Termly thereafter at the Terms above-mentioned, by equal portions during all the days of her Lifetime, and that free of all publick Burdens or Deductions whatsoever, either already imposed upon Liferent Annuities, or that hereafter shall be imposed by any Law or Act, without longer delay, with the Sum of 100 lib. Money foresaid of liquidate Expenses for each Terms failzie, toties quoties. It is always hereby provided and declared, That her accepting of this present Corroborotion, shall no ways derogate from, nor be prejudicial unto the Clauses Irritant, and other Provisions contained in the said Contract, which are conceived in favours of the said B. Follows a Clause of Relief by the Father to the Son.

Of

Of Bonds of Interdiction and of Obligements by Persons Interdicted.

A Bond of Interdiction is a Writing wherein a Party acknowledging his Weakness and Levity, or readines to hurt himself, does therefore Interdict and Bind himself, that he shall not Act without Consent of Persons therein-mentioned, who are called Interdictors, and are as Curators, tho' they be not obliged for Intromission or Omission, but only to Consent with the Person Interdicted, and are lyable for any fraud or fault in Consenting. It is a kind of Inhibition, and hath the same effect, provided the Party was truly Weak and Lavish. The form of such a Bond is thus,

BE it known; &c. *Me W. A.* Forasmuch as by the Facility of my Nature, and small experience to mannage my *Worldly Affairs*, and other too palpable Infirmities that follow me, I may be induced by perswasion of crafty and evil disposed Persons, to make and grant Alienation, Discharge or Renunciation, of my Lands, Tenements, Annualrents, Heritages, Debts, Sums of Money, Goods and Gear pertaining or that shall happen to per-
tain

tain to me, in time to come, to one Person or other, to my great Hurt, Enormity and Lession, if I be not defended by the Counsel and Advice of some discreet and understanding Person, against all such Transactions. And I putting intire Trust and Confidence in B. and C. by whose Counsel and Advice, I intend to Direct all my Actions, Affairs and Business, Therefore wit ye me, of my own free Will and Motive, without being any ways compelled or induced thereto, but meerly for my own good Utility and Profit, to have Interdicted, as I by the Tenor hereof Interdict my self to the said B. and C. and bind and oblige me, that I shall not make nor grant any Disposition, Assignment, Alienation, Discharge or Renunciation, of my Lands, Heritages, Tenements, Annualrents, Debts, Sums of Money, Goods, Gear, and others whatsoever, pertaining or that shall happen to pertain to me in all time coming: And that I shall not affect nor burden my said Heritages, or other Interest, either Heritable or Moveable, by any Deed to be done by me, nor shall I Contract any Debts, become Cautioner for any Person, nor grant Bond nor Obligation for any Sums of Money, or performance of any other Deed whatsoever, upon which the foresaids Lands, Annualrents, and other Heritages, may be Adjudged or Eviſted in whole or in part, or any of my moveable Goods, Poinded, Destrenzied and Apprized, and for which I may be charged and denounced to the Horn, wherethrow my Escheat
and

and Liferent may fall, and my Person be Imprisoned, and that I shall not Bargain, Block nor Buy, from or with any Person or Persons whatsoever, nor do any other thing directly or indirectly, whereby my saids Lands, Heritages and others foresaid, whether Heritable or Moveable pertaining to me, or that shall belong to me as apparent Heir to, &c. may be any ways burdened or distrest, as said is, without the special Advice, Consent and Assent of the said B. and C. first had and obtained thereto in writ under their Hand, and whatever shall be done in the Premisses without the foresaid Consent, so had and obtained, shall be Void and Null, and of no Force Strength nor Effect, in all time coming, with all that can follow thereupon: And to the Effect that no Person may pretend Ignorance of this my Interdiction, I am content that Letters be raised hereupon for publication hereof at the Mercat Cross of, &c. and other places needful, and that the same with these presents, be Registered in the Books of Council and Session, or any other competent Register, therein to remain ad futuram rei memoriam, and Constitutes, &c.

A shorter Form of Interdiction.

BE it known, &c. me, &c. Lawful Son to, &c. Forasmuch as, I considering the Facility of my Nature; That not only I may be Induced and inticed to become Cautiomer, for diverse Persons, for Payment of Sums of Money

ney; or for performing of other Deeds, but also to Borrow Sums, and do other Deeds, whereby my Person may be Troubled, and my Lands, Goods and Gear Adjudged from me, my Heirs, Executors and Successors. And being Careful to prevent the same; having sufficient Proof and Experience of the good will and favour born to me by &c. and &c. Therefore and for diverse other good Causes and Considerations moving me. Wit ye me to be Bound and Obliged and Interdicted. As I by these presents, Bind, Oblige, and Interdict my self to the said, &c. any one of them, being on Life, that I shall not become Cautioner for any Person, or Persons whatsoever, for Payment of Sums of Money; nor for performing of no other Deeds nor Facts: Nor yet shall I Contract Debts, nor do no other Deeds whatsoever, nor Subscribe no Contracts, Bonds, Obligations, Dispositions, nor other Rights whatsoever; without the Advice, and special Consent of the fore-named Persons, or any one of them, being on Life for the time, first had and obtained thereto in Writ: Declaring and Consenting by thir presents, that all Contracts, Bonds, Obligations, Dispositions and other Writs whatsoever, to be Subscribed without the Consent of the foresaid Persons, at least of any of them being on Life, for the time, first had and obtained thereto in Writ, or Subscribed by them, shall be Null, and of no Avail, Force, Strength or Effect, with all that shall follow thereupon Requiring, &c.

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Ano-

Another kind of Interdiction, with
fundry unusual Provisions.

BEe it known, &c. me A. Forasmuch as,
I do Consider, that by the weakness of my
sight, there may be Advantages taken of
me, and I may be Induced and Intised not only
to Subscribe and become Cautioner for diverse
Persons, for Payment of Sums of Money; or
for performing of other Deeds; But also to grant
Bonds, as it were for borrowed Money, and do
other Deeds, whereby my Person may come to be
Troubled, and my Lands, Goods and Gear Ap-
prysed, or Adjudged from me, my Heirs and
Successors. And I being careful to prevent these
Inconveniencies; And withal having sufficient
Proof and experience of the good Will and Kind-
ness born to me by E. and D. Therefore, and
for diverse other good Causes and Considerations
moving me, Wit ye me to be Bound, Obliged and
Interdicted, as I by thir Presents, (under the re-
servation, and upon the expresse Provisions and Con-
ditions after-mentioned; Bind, Oblige and Interdict
my self to the saids E. D. and G. or any two of
them, the said E. being always one, and failzie-
ing of him by Death or Absence, the said D.
being always one, and failzieing of him, the
major part, That I shall not become Cautioner
for any Person or Persons whatsoever, for Pay-
ment of Sums of Money, nor for performing
other

other Facts or Deeds, nor shall I Contract Debts, nor do no other Deed whatsoever : (Except as is hereafter expressed) nor Subscribe Contracts, Bonds, Obligations Dispositions, nor any other Writs whatsoever, without the special Advice and Consent of the fore-named Persons, or their Quorum, first had and obtained thereto by Writ, Declaring and Consenting by these presents, That all Contracts, Bonds, Obligations, Dispositions and other Writs whatsoever, to be Subscribed by me, without Consent of them or their Quorum above-written, first had and obtained thereto in Writ, or Subscribed by them, shall be Null, and of no Avail, Force nor Effect with all that shall follow thereupon ; Reserving always full Power to me, with Consent of S. my Spouse allenarly, and without Consent of any of the fore-named Persons to Compt with my Chamberlain and Ten-nents, and to grant Discharge of the yearly Du-ties of my Land, Feu and Tythe Duties, and also to Discharge my Debtors of the Annual-rents that are presently bygone, or that shall be-come due during the continuance of this Inner-terdictiōn ; which Discharges shall be sufficient, being only subscribed by me and my said Spouse; And farther, reserving Power to me with Con-sent of any two of the foresaids Persons to whom I have Interdicted my self, to sell Lands or Tythes, contract Debts Heretable or Moveable, and to grant Bonds and Wadssets for the same, or Infeftments of Annualrent, or to do any other Deed whatsoever, except the revocking, an-
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nulling,

nulling, qualifying or altering of the Interdiction it self, and which Deeds to be done, and Securities to be granted thereanent, shall be valid and sufficient in favours of the Persons to whom they are given; And in like manner reserving Power to my self with Consent of the said E. and failzying of him by decease, with Consent as aforesaid, to revoke this present Interdiction, and declare the same Null, and that by a Writ to be subscribed by me and them, and to be Registred in the Books of Council and Session, which shall be sufficient for that effect. And lastly, It is hereby provided and declared, that this present Interdiction shall continue for the space of three Years after the date hereof, and it shall be lawful to me thereafter, without Consent of the fore-named Persons, or any of them, to Act and Do by my self, every thing in relation to my Affairs, as fully and freely without their Consent, as I might have done before the subscribing hereof, under which express Reservations and Provisions this present Interdiction, is granted, and no otherways, Registration, that Letters of Publication may be direct hereupon in form as effects.

Bonds and other Writs granted by a party Interdicted, with Consent of the Interdictors, are not different in Stile, from these made by a Minor with Consent of his Curators.

Of Obligatory Clauses insert in other Writs.

IN Writs of Exoneration or Conveyance, it is sometime necessar to insert an Obligement to reiterat and renew that Writ, which is in this form; *And I bind and oblige me and my foresaids, to reiterat and renew this present Discharge, keeping always the substance above-written, when ever I shall be desired from time to time, ay and while they, and every of them, find themselves sufficiently secured thereanent*—I have seen this added, *And to amplify and enlarge the same, with all other Clauses and Expressions necessar.* In this Clause, it should be declared, upon whose Charges the Writs are to be form'd.

A Clause to cause Ratify and Reiterate, is this, *And I bind and oblige me and my foresaids, to cause my said Sisters, &c. and failzying of them by decease, their nearest lawful Representatives after their perfect Age of 21 Years compleat, to Ratify and Approve, and if need be, to Reiterate and Renew these Presents to the said C. or his above-specified, ay and while he or they find themselves sufficiently secured concerning the Premisses.*

In Writs granted by Husband and Wife, the Husband obliges himself to cause the Wife ratify the Deed judicially, which
Oblig-

Obligement is thus—And in like manner, *I the said A. bind and oblige me and my fore-saids, to move and cause the said B. my Spouse, not only to subscribe these Presents before famous Witnesses, but also to compear before any Judge Ordinary, and there out of my presence judicially Ratify the Premisses, and declare upon her great Oath, that she is no ways compelled to the granting hereof, but that she does the same willingly and of her own accord ; and that she nor no other to her behoof, shall ever quarel or impugn the same, or come in the contrar hereof, directly nor indirectly, by any manner of way in time coming. Or rather thus, And as the said B. my Spouse has voluntarily and freely Consented to this Disposition ; So she upon the Faith of a Christian has promised, and I for her and for myself, oblige me and her, that she shall not only Subscribe these presents, &c.*

An Obligement to cause a Party Absent, Ratify and Sign a Writ——Likeas, *I the said A. bind and oblige me, &c. to cause the said B. betwixt the——day of——to Ratify this Discharge, and to Subscribe the Ratification with his hand, before famous Witnesses, and thas under the pain and penalty of——Scots Money, to be pay'd by me to the said C. in case of failzie, by and attour fulfilling of the Premisses.*

Of the same form are Obligements by a Tutor, Curator or Factor, to cause the Pupil or Minor at Majority, and the Constituent

tuent at his return to the Kingdom, to ratify and renew the Bond or other Writ, granted by the Curator or Factor.

It was formerly said, that if the Bond has been Registred, and real Diligence done thereon, the Discharge thereof is in a writing a part, and must have a Narrative.

Discharge by the principal Creditor to the Debitor himself, of a Bond, &c. which is only Registred.

BE it known &c. *Me A.* Forasmuch as (here narrate the Bond in common form) *And now seeing that the said B. hath made payment to me of the foresaid principal Sum of——— and whole bygone Annualrents of the same, wherewith I hold me well contented and satisfied, renouncing, &c. Therefore wit ye me, to have Exonerated, quite Claimed, and simply Discharged; Likeas, &c. the said B. his Heirs and Executors of the Bond above-mentioned, and of the whole Sums of Money, Principal, Annualrent and Expences above-specified contained therein, and of all Letters of Horning, Poinding, Arrestment, and other Letters and Diligences, if any be raised thereupon, and of all that has followed or may follow upon the Premisses for now and ever; which Discharge above-written, I bind and oblige me my Heirs and Executors, to warrand to be*

to the said B. and his foresaids, an sufficient Exoneration concerning the Premises at all hands, and against all deadly; Likewise, I have instantly delivered to him the Extract of the foresaid Bond to be cancelled and destroyed at pleasure.

When the Discharge is granted by the Creditor's Heir, you need not narrate the Service, but to the Granters proper Designation, add the additional one of *Heir Served and Retoured to the deceast A. my Father*, and then proceed narrating the Bond granted to the Predecessor, and the Stile of the Discharge is the same, as if the Obligation had been granted to the Discharger.

The same is to be observed in a Discharge granted by an Executor whose additional Designation is *Executor Nominated and Confirmed to the deceast B.*

If the Granter be both Heir and Executor, it is—*Me A. Brother and Heir Served and Retoured to the deceast — and Executor Decern'd and Confirm'd to him.*

In both which Cases, it is convenient after the Clause of Delivery of the ground of Debt, to place an Obligation to make the Retour, or confirmed Testament furthcoming to the Debitor, and there set down their dates.

But if Diligence has been raised by the Heir, or Decreet obtained at the Instance of the Executor, without which it is seldom

dom safe to pay an Executor, these are narrated in common form.

In Discharges by an Assigney, to the ordinary Designation, you may add *Assigney after-specified*, and after narrating the Bond you may say, *which Bond and Sums therein contained are Assigned to me the said A. by the said B. conform to an Assignment of the date, &c. And now seeing, &c. Therefore I as Assigney and having Right in manner foresaid by these presents Discharge, &c.*

Discharges of Debts due to Pupils are granted by the Tutor, the Stile of which is thus exprest, *Be it known, &c. me A. Tutor dative to B. conform to the Letters of Tutorry dative granted to me under H. M. quarter Seal, of the date——Therefore, I as Tutor foresaid, Exoner, &c. some have, I as Tutor foresaid, and as taking burden upon me for my said Pupil, Exoner, &c. And in the Warrandice, I for my self, and as taking upon me as said is, by these presents bind and oblige me, my Heirs and Successors, to warrant, &c.*

When the Debt is due to a Minor, the Discharge is granted by him with consent of his Curators, thus, *Me A. with the special Advice and Consent of——my Curators for their Interests. In the Clause of payment, the Money is not said to be payed to the Minor, but to one of the Curators, or to their Factor, thus, And now seeing the said B. hath made payment to C. one of my Curators for my behoof, of the said Sum, &c. There-*

fore wit ye me the said A. with the special Advice and Consent of my said Curators for their Interest, to have Exonered, &c. which Discharge, I with consent foresaid of my said Curators, bind and oblige me, &c. to warrant, &c. Some mention that such a number of the Curators is a Quorum, and the name of the Curator *sine quo non*.

In Discharges of Debts or Donations due to a Wife, the Husband who is her Curator must consent, which is thus expressed, *Be it known, &c. me A. with the special Advice and Consent of B. my Husband for his Interest, and me the said B. for my self and my own Right, with consent of, and taking burden upon me for my said Spouse, and us both with one consent and assent, the Subsumption is, And seeing the said C. hath made payment to me the said A. and my said Husband, of the foresaid Sum of ——— wherewith we hold us well Contented and fully Satisfied, Therefore wit ye us both with one consent, and me the said B. taking burden upon me for my said Spouse, to have Exonered, &c.* And in the Warrandice thus, which Discharge above-written, we the said A. and B. both with one consent, and me the said B. taking burden upon me for my said Spouse, bind and oblige us conjunctly and severally, our Heirs, Successors and Executors, to warrant, &c. In case the subject Discharged be claimed by diverse Persons, among whom the Competition is not determined in Judgement, or if the Debt
be

be Arrested, or otherways affected, the Consent of these Persous is requisite, the which Consent is not expressed either in the beginning, or in the Subsumption, but only in the Clause of Discharge, thus, Therefore, wit ye me with *Advice and Consent* of D. E. &c. for all Right and Interest, that they or any of them have, or can pretend to the said Legacy, or any part therof, by Arrestment, Assignation or otherways, to have Exonered, &c. And the Warrandice is, *And I the said D. for my self and as Assigney foresaid, and I the said E. bind and oblige us, each of us for our own parts, to warrant this Discharge from all Arrestments laid on at our instance, in the hands of the said ——— and from all other Facts and Deeds done and to be done by us, prejudicial hereunto allenarly.*

When the Discharge is granted by many Persons, of a Subject common to all, the Discharge is thus, Therefore, wit ye us, each of us for our own parts, to have Exonered, and the Warrandice is, ——— oblige us, each of us, for our own parts to warrant, &c.

A Discharge by a Factor is thus, I A. Factor constitute by B. conform to a Façtory dated ——— Registred in the Books of Council and Session upon ——— grant me to have received from C. the Sum ——— mentioned in the said Façtory, and hereby Discharges him, his Heirs, Successors, and all others whom it effeirs, of the said Sum of ——— and oblige my said Constituent

tuent to warrant this present Discharge to the said C. and his foresaids at all hands, and against all deadly as Law will. Or thus, I A. Factor specially Constituted by B. conform to the Factory and Commission given by him to me, of the date——Registered in the Books of Council and Session, upon——grant me to have received from C. the Sum of——contained in a Bond, &c. And farther, I as Factor foresaid grant me to have received (another Sum) Therefore I by these presents Exoner, &c. the said C. and his said Cautioners of the foresaid principal Sum of——&c.

A Renunciati^on of Conditions, Exceptions or Reservations, in Charters or Dispositions subjoin'd to a Discharge, is thus, And Renounces any Interest that the said B. can pretend by virtue of that Bond, hereby Discharged, to the Lands and Estate belonging to the said C. by vertue of the Exception or Reservation contained in the Disposition made by the said B. to the said C. of the Lands therein-mentioned; and as Factor foresaid, I bind and oblige the said B. his Heirs, Successors and Executors, to warrant this Discharge to be, &c.

If the Discharge be granted to the Debtors Heir or Executors, lyable in payment of the Debt, after the narrative in the subsumption, the Stile is, And now seeing A. Heir Served and Retoured (or Executor Decerned and Confirmed) to the said decess^t A. his Father hath made payment to me, &c. There-

Therefore to have Exonered the said A. his Heirs and Executors, and all others the Heirs, Executors and Representatives, of the said deceased C.

In Discharges given to Factors, the Subsumption is, *And seeing A. as Factor for, and in name and behalf of A. hath made payment, &c.* But the Discharge is given to the Constituent who was bound. The same may be said of Tutors and Curators.

When a Stranger pays the Money, it is either by verbal order, or the Money is intrusted to the Payer, and then he has the relation of a Factor; but if none of these cases happen in the Discharge, the Receipt of the Money must bear the payers Name, but in the Discharge mention is only made of the Debtor, but in the first case, the Name of both is exprest; take this Example, *I A. grant me have received from B. the Sum of ——— which with the Sum of ——— allowed to ——— makes in all the Sum of ——— as the Teind duty payable to me by the Tennents of C. for the Crop and Tear of God 1715. as also I grant me to have received from the said B the Sum of ——— which was payed to him by D. in part of his bygone Rent; And therefore, I by these presents Exoner and Discharge the said B. and the Tennents of C. of the foresaid Teind-duty for the Crop 1715. and him and the said D. of the foresaid Sum of ——— in part of the bygone Rent of ——— And I bind*

bind and oblige me, and my Successors, to warrant this Discharge to him, and them respective at all hands, and against all deadly.

Again, the principal Debtors to whom the Discharge is granted, are either such against whom no personal Diligence or Attachment has been used, as Denunciation and Imprisonment, or they underly these difficulties, in which last case to the Stile of the Discharge, other Clauses are added as you shall see bye and bye; or his Goods moveable or immoveable are affected for payment of the Debt, the first by Arrestment, the other by Infeftment of Annualrent, Wadset, Apprying or Adjudication, of which sort of Discharges the Stile is given hereafter, which is various according to the diversity of the Subject, and circumstance of Persons.

If the Debtor be denounced to the Horn, and Registred, and Imprisoned for not payment of the Debt, when he satisfies the same, the Discharge must have a warrant to suspend and relax from the Horn, and to be put at liberty without Caution or Consignation, and besides the ground of the Debt whether Bond or Decreet, the Diligence raised on it, must be narrated in the Narrative of the Discharge, in common form, And in the body of the Writ must be discharged, Thus——*And of all Letters of Horning, Poinding, Inhibition, Arrestment,*
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Caption and others, raised thereupon with the Executions thereof, and all that has followed or may follow upon the same. And I am content and consent, That so many, of the persons abovenamed, as are denounced to the Horn for the Cause foresaid, be freed and relaxed from the same; As also, that the said D. be freed and put to Liberty, furth of the Tolbooth of ———— where he presently remains, without either Caution or Consignation.

If there be no Registred Denunciation, or if the Debitor be not Imprisoned, then you leave out that part of the Stile of the Discharge which relates to these two Circumstances.

Discharges have a different Form and Stile arising from the quality of the Subject discharged, which is either Moveable or Heritable, among Moveables, which cannot be well enumerated, are reckoned *Sums of Money due by Bond, Legacies, Bairns part of Gear, Intromission with Goods, Tutor and Curator Accompts, Factories, Processess, and depending Actions, Arrestments and Decreets, Discharge of personal Execution, reserving real Action against the Lands of the Debitor, Bonds of Interdiction, and the like; among Heritable Subjects we compt Infeftments of Annualrents, Adjudications, Apprysings, Wadsets, Reversions, &c.*

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Discharges of Bonds for borrowed Money, are already treated of, follows the Stile of a Discharge of a Legacy. *Be it known, &c. me A. Forasmuch as* (here narrate the Testament) *And now seing the said B. [Executor Nominate] hath made payment to me of the foresaid Sum of—— left in Legacy to me by the said C. in manner foresaid, wherewith I hold me well contented and satisfied; Therefore, wit ye me to have exoner- ed, &c: the said B. his Heirs and Executors of the foresaid Sum of—— of Legacy above- mentioned, and of all Action and Execution competent, or that may be competent to me a- gainst him, and his foresaids hereanent, for now and ever, &c.*

Discharge by a Son to a Father and Elder Brother, of all Bairns part of Gear, and Provision.

BE it known, &c. me A. Forasmuch as C. my Brother-German by his Letters of Alie- nation and Disposition of the date, &c. hath Dis- posed to me and the Heirs Male, &c. which Failzeing, &c. As in the original Dis- position, All and Haill, &c. as in the said Letters of Disposition and Alienation, contain- ing a Reservation of my Fathers Liferent during all the days of his Lifetime, at more length is
ex-

express, And seeing the foresaid Disposition is granted to me in full contentation and satisfaction of all Bairns part of Gear, Portion natural, Executry, Legacies, or any other Provision whatsoever that I can ask or claim by the decease of the said A. my Father, or of umquhile ——— my Mother, wherewith I hold me well contented and satisfied; Therefore, wit ye me, to have Exonered, &c. as I by these presents, &c. the said A. and B. his Eldest Son, their Heirs and Executors, of all Bairns part of Gear; portion Natural, Executry, Legacy, or other Provisions whatsoever, that I can ask claim or crave, by the decease of the said A. my Father, when the same shall happen at the pleasure of God, or of umquhile — my Mother, and of all Action and Execution competent, or that may be competent to me thereanent, for now and ever, which Discharge, &c.

Discharge of Intromission with Goods.

BE it known, &c. me A, Forasmuch as B. hath made Compt Reckoning and Payment to me, of all his Intromissions with the Customs, Excise and Bullion, and with all Seisures and Casualties of Goods and Merchandise, Imported to and Exported from Leith, from the first of November 1675, to the fourth of October 1681, inclusive, and of his Intromissi-

on with the Imposition due to the Town of Edinburgh for all Wines, and all foreign Beer and Ale, from the 12th of November 1676, to the 9th of November 1680 inclusive, with which Accompts and Payments, I hold my self well contented and satisfied: And therefore, I by these presents Exoner, &c. the said B. his Heirs and Executors, of his whole Intromission with the foresaid Customs, Excise and Bullion, and with the foresaid Seisures and Casualties, of all Goods and Merchandise, Imported to, and Exported from Leith, from the said 1st of November 1675, to the said 4th of October 1681 inclusive, and of his Intromission above-mentioned, with the Imposition due to the Town of Edinburgh, for all Wines, and of all foreign Beer and Ale from the 12 of November 1675, to the said 9th of November 1680 inclusive: and of all Action, &c. Which Discharge, above-written, I oblige me to warrand &c, excepting and reserving always from this present Discharge and Warrantice thereof above-mentioned, such Debts and Sums of Money, as the said B. hath given up to me, to be resting of the Excise, and of the Bonds and Tickets, particularly mentioned in four fitted Accompts subscribed by him and me, on the ——— day of ——— last, And in case it shall be found, that any of the Sums therein-specified, given up as resting, be payed, Then the said B. is to be lyable for the same, notwithstanding of this present Discharge, Conform to
his

his Obligement upon the end of the foresaid four Accompts.

Of Discharges by Minors to their Tutors.

A Discharge by a Minor with Consent of his Curators, to one who had been his Tutor, is in this Form. *Be it known &c. me A. with the special Advice and Consent of C. and D. my Curators for their Interest, Forasmuch as B. having been Tutor nominated to me the said A. and having accepted of that Office, and acted accordingly; and I and my saids Curators considering, that the said Tutor had not any actual Intromission with any Money or Means belonging to me, except 3000 Merks which was uplifted by him, and imployed first in the hands of ——— and afterward uplifted from him, and now in the hands of ——— but allowed F. my Kinsman, who was formerly intrusted by my Mother, to receive any Annual-rents that were uplifted for our use, since his acceptance of the foresaid Office, and who accordingly hath made clear Compt, Reckoning and Payment, of his Intromissions therewith, conform to a fitted and subscribed Accompt, betwixt him and the said F. and the said Tutor hath made Compt, Reckoning and Payment to me and my saids Curators, of what was Intromitted with by the said F. conform to the said*

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Tutors allowance, And I and my saids Curators above-named, being very sensible of the great Care and Kindness, Fidelity and Diligence of the said Tutor my Friend, in the management of my Affairs during the time of my Tutory, And having now received from him such of the Writs and Evidents of the Means and Money belonging to me as were in his hands; And being most willing for the Causes, and upon the Considerations before-mentioned, to grant to my said Tutor, a full and ample Discharge of the Premisses: Therefore, wit ye me, with Advice and Consent of my saids Curators to have Exoner'd, quite Claim'd, and simply Discharg'd, And by these presents, Exoner, &c. the said B. Tutor foresaid, of all Goods, Gear, Debts, Sums of Money, Moveables, and other Estate whatsoever pertaining to me, which were Intromett'd with by him, and of all Writs and Evidents pertaining and belonging to me, and of all Intromissions and Omissions wherewith he might have been charged relating to his said Office; dispensing with the generality, &c.

The Discharge hath sometime a Receipt of the Writs in the Subsumption, as thus; And also seing the said B. hath delivered to me for my self, and in name of my said Sisters, the Bonds, Accompts, and other Writs after-specified, To wit, (here mention them in common form of Inventar) Together likeways with severall Letters of Horning, Caption, and other Diligences done upon the said Bonds and Accompts.

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The Clause of Receipt of the Writs is more general, in some Discharges thus ; *As also seeing the said C. and D. who had the sole custody and keeping of the Writs and Rights of my Estate, have for themselves, and in name and behalf of my other Tutors, now delivered up to me, and to my said Curators, the whole Bonds, Obligations, Assignations, Translations, Contracts, Dispositions, Infeftments, and other Writs whatsoever, pertaining to me ; Together also, with the whole Instructions of the Discharge of all their Intromissions and Compts, whereof I grant the Receipt, and have also delivered to me the Movable Heirship with the Household Plenishing, which was confirmed in my Fathers Testament, and which remained unrouted and not sold, and whereof I also grant the Receipt, Therefore, wit ye me, &c.*

Or yet more general thus, *And having now received from them, all the Writs and Evidents of my Estate, which were in either of their hands, and also, having received from the said ——— the Writs concerning the Ward and Marriage, which was gifted, &c. which were more particularly intrusted to him, by the other Tutors.*

If the Discharge contain an Exoneration to a Factor appointed by the Tutor, the Narrative is in this form ; *Forasmuch as B. Tutor Dative to us, hath quit and given over his Office of Tutorship, at the desire of some of our best Friends, and granted a Factory to C. for*
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the managing and guiding of our whole Estate and Means, in manner specified in the Letters of Factory granted thereanent; And seeing the said C. hath most faithfully and really and actually discharged the Trust that was committed to him as Factor foresaid, and hath now made Compt, Reckoning and Payment to me the said A. for myself, and as Curator to my said Sisters, of the whole Sums of Money and others, which pertained to us, and which were Intromitted with by him, or should have been Intromitted with by his said Constituent, as the Account delivered by him to us, containing the whole Charge, with the Discharge and Instructions thereof, subscribed by him, and also allowed and subscribed by me the said ——— at more length proports, and also hath delivered the Writs, &c. Therefore wit ye us all with one Consent, for our selves, & as having Right to that part of the foresaid Sums which belonged to ——— our Sister, by expresse quality of the Bond of Provision above-specified, granted by our said Father, and me the said A. as Curator to, and taking burden upon me for the said ——— my Sisters, to have Exonerated, &c. the said C. and also the said B. Tutor above-nominated his Constituent, their Heirs and Executors of the whole Premisses, and of all and whatsoever Debts, Sums of Money, Goods, Gear, and others whatsoever, which we, or any of us, our Heirs or Executors, can ask, claim or crave, of the said C. as Factor for our said Tutor

Tutor, or from the said B. his Constituent, by whatsoever manner of way, and of all Action, &c.

Or if one of the Tutors was appointed by the Others, Factor and Intrometter; the Narrative, Subsumption and Discharge is in this form. Forasmuch as, the deceast A. and B. C. and D. being nominate Tutors by my said Father to me, did accept the foresaid Office, and granted a Factory to the said D. one of their own number, for intrometting with my Means and Estate, and management of my Affairs, during the whole time that I was under the Years of Tutor; And now seeing the said D. one of my said Tutors, who was Factor constituted by the rest, hath given in to me the Compt of his Intromissions, with my Money, Means and Estate, and of his Depursements, Charge and Discharge of the same during the Years of my Tutor, Therefore, and in regard the said D. hath made payment to me and my saids Curators, of the Sum of ——— which was the Ballance of the Discharge of his Intromissions, whereof I grant the Receipt, and hold me well Contented, &c.

In this Case the Clause of Discharge should begin with a Ratification of these and of all Discharges, &c. Thus, Therefore, &c. not only to have Ratified and Approven, as I &c. the Factory above-mentioned granted by my saids Tutors to the said ——— and all that my said Tutors, and the said ———

as Factor foresaid have done in the Exercise of the said Offices and their said Intramissions, and the Accompts of Charge and Discharge given in to me, and the whole Instructions of the said several Discharges, as also the Discharges granted by the said ——— as Factor constitute by the said Tutors; and I do approve and allow the whole Premisses, and declare my self fully satisfied and pleased therewith, But likewise to have Exonerated, &c.

But, if one or more of the Tutors had the sole Intramission with the Pupils Estate by Permission, and not by Factory or Commission; the Narrative is, And also the said C. and D. had the only Intramission of my Estate, and took particular Care in the management of my Affairs from the time of their accepting the foresaid Office of Tutor, And seeing the said C. and D. two of my said Tutors, and sole Intramitters with my Estate, Rents and Annualrent thereof, have given in to me and my saids Curators, the Accompts of their Intramissions and Debursements during the Tutorship with the Charge and Discharge of the same, together with the Instructions of the Discharge of the said Accompts, &c.

The Motive or Conclusion of the Subsumption is various, as, And I having at length seen and duly and fully Considered the same, I acknowledge the Instructions of the said Debursements and Discharge, to be True and of Verity, and that the Actings of my said Tutors

(Curators) and Factor, since the decease of my said Father to this time, have been for my well and Advantage.

In another form thus, *And now seeing that the said B. hath made Compt, Reckoning and Payment to me of his Intromissions with my whole Money, Means, Moveables, Goods and Estate, and with the Mails, Profits, and Duties of my Lands, during the whole time of his Tutor, to me, and hath given in to me the Charge and Discharge of the same, together with the Instructions of the Discharge ; And I being fully satisfied and well pleased, with the said Accompts, and with the Articies and Instructions thereof, and withal being fully convinced of the care and kindness of my said Tutor, and of his concern for my Interest since my Fathers decease, Therefore, &c.*

In a shorter Form, *And being most willing for the Causes, and upon the Considerations before mentioned, to Grant to my said Friends, a full and ample Discharge of the Premisses, Therefore, &c.*

The Clause of Discharge is also thus, of all Goods, Gear, Debts, Sums of Money, Moveables, Mails, Duties of Lands and of all other Means and Estate whatsoever pertaining to me, for my self, or as Heir or Executor to my said Deceased Brother, or other of my Predecessors, which were Intromitted, or might have been Intromitted with by them, and of all Writs
Y and

and Evidents, pertaining and belonging to me, and of all Intromissions and Omissions, &c.

Or in a better form thus ; of the whole Intromissions had by (the said D.) my said Tutors and Curators and Factor foresaid, with my Estate, Rents and Annualrents thereof, and of the Moveable Heirship, and whole Silver Plate, Household Plenishing, Lying Money, Gold and Silver, which was Confirmed in the Testament of the deceast——my Father, And further, for certain Onerous Causes and Considerations Moving me, Wit ye me of my own proper motive, and certain knowledge to have exonered, &c. my said Tutors (and Curators) that are now on Life, their Heirs and Executors, and the Heirs Executors and other Representatives of the said Umquhile —— And the said D. not only as one of the saids Tutors (and Curators) But likewise as Factor Constitute by the said Tutors, for themselves and me, of their said Tutorry (and Curatory) and Factory, and of all omissions and negligence whatsoever, that may be laid to their Charge, relating to the exercise of their said Offices of Tutorry (Curatory) and Factory, and of all Action competent to me against them or any of them thereupon, and of the whole Bonds, Obligations, Assignations, Translations, Contracts, Dispositions, Charters, Infestmenss, Seasins and other Writs of my Estate ; And of the whole Instructions of the Discharge of their Accompts of the Intromissions had by my saids Tutors (Curators)

or Factors which are now delivered up to me as said is, and of all Action competent to me against my said Tutors (Curators) and Factor, for making further Compt and Reckoning to me, or for delivering to me the Writs and Evidents, and others above-mentioned, or on whatsoever other ground that may result upon the said Tutorry (Curatory) or Factory, so as these presents shall be an ample and absolute Discharge to them concerning the whole Premisses.

In Discharges of Offices as Tutorry, Curatory, Factory, and the like, and in all general Discharges after Enumeration of some of the Species of the Goods Intromitted with, there is a Declaration Dispensing with that generality in this Form — Dispensing with the generality of this present Discharge, and admitting the same to be as valide, effectual and sufficient to all Intents and Purposes, as if every particular were specially mentioned, and expressed, whereanent we have dispensed, and by these presents dispence (with consent foresaid) for ever.

Or thus — And we declare this our Discharge, to be as Valid and Sufficient to them, as if the same were more special and particular whereanent, we all, with one consent have dispensed, And by these presents dispence for ever, and renounce all exceptions in the contrair.

If any of the Tutors or the Factor be Owing Money to the Pupil, or if there be Rents or Annualrents unuplifted, and not

Compted for, This Declaration or Exception, is to be subjoined to the Warrantice. *Declaring nevertheless, that this Discharge, nor any Clause contained therein, shall not prejudice the Bonds after-mentioned and Obligement under-written, viz. Which Bonds and whole Clauses and Obligements thereof are to continue in their full Force and Vigour, notwithstanding of this present Discharge, or any thing contained therein ; Neither shall the same prejudice me of any bygone Rents that are yet Resting by my Tennants, or of any Rents which are Intromitted with by my Chamberlains, and not yet Payed in, nor Compted for to my said Tutors ; so that it shall still be lawful to me, to call them or their Heirs to Accompt thereanent : In so far as, they have not Compted already in manner foresaid.*

Some put this Declaration by way of Provision before the Warrantice, and make the Discharge to be Warranted under that Provision, which is thus, *Providing always, that my Granting of this present Discharge shall no ways hinder nor impede me to call for such Rests as are yet due by my Tennants, or Uplisted from them by the present Façtor, and which are not yet Compted for by him to me, which Discharge, I Oblige me to Warrant, &c. under the Provision always above-specified.*

In Case the Tutor be any way bound or Ingaged for the Pupil, an Obligement of
Re-

Relief is needful, which is thus; *And Lastly, I bind and oblige me and my foresaids, to War-rand Free, Relieve and Skaithless keep my said Tutors (or Curators) and their foresaid, and the Representatives of such of them as are Dead from Payment of all Sums of Money, principal Annualrents and Penalties, wherein they stand Engaged for me, or the deceast——my Brother by Bond, Contract, or any other manner of way whatsoever as Tutors (or Curators) to us, or either of us at any time, preceeding the day and date of these presents, if any of these Bonds shall happen to be found unretired, or uncanceled, and of all Coast, Skaith, Damage or Expenses, and Interest, that they or any of them, or their foresaid, shall happen to sustain or incur there through in any sort.*

In these Discharges mention is made of Sign'd Compts of Charge and Discharge of the Tutor and Factors Intromissions and Debursements, at the end of which Compt and Reckoning, there is a Docket of this Form at Edinburgh, the —— Day of —— 1715, *This is the Accompt of the Charge, Means, Money, Rents and Annualrents, which belonged to the said A. the time of his Fathers Decease, and since, with the Discharge thereof Fitted and Cleared, betwixt the said A. and B. for himself, and as Tutor and Factor for, and in name of the said A. his other Tutors (and as Curator to him, and in name of the other Curators) and in respect the said A.*

is

is fully satisfied with the foresaid Accompt, both Charge and Discharge thereof, and has received the whole Instructions and Ballance of the same. Therefore he Discharges the said B. and all his other Tutors (and Curators) of all he can lay to their Charge, for Intromissions and Omissions, conform to a particular Discharge given by the said A. to them of this Date, under the Exceptions therein mentioned; In Witness whereof, the said A. and the said B. for himself, and in name foresaid, have Subscribed this and the twenty preceeding Pages, In presence of &c.

Of Discharges granted by a Major to his Curators.

There is little Difference in Discharges of a Curator from those of a Tutor, for the Obligation of both is the same, So what is said concerning Tutors serves for Curators, if nominated by the Father, But if they were chosen by the Minor, you mention in the Narrative of the Discharge, that, and the Acceptance of the Curators, thus, Forasmuch as B. C. and D. were Curators Elected and Chosen by me, and accepted of that Office: And I with their Consent, did Grant a Factory to the said D. for Intrometting with my Means and Estate, Or when the Persons Discharged, were

were both Tutors and Curators, after a Narrative, which respects the Tutor, you say — Likeas, after the expiring the saids Years of Tutor, I made choice of the said — to be Curators to me, with power to them or any two of them, the said C. or my Mother being one, to exerce the foresaid Office during my Minority, as the *Act* of Curatory bears; As also, the said C. and the said — my Mother, had the only Intromission with my Estate, and took particular care of the management of my Affairs, from the time of their being elected Curators to me, &c.

The Subsumption and Discharge does not much differ from that in a Discharge of Tutor, except in this — And seeing that now after my full and perfect Age of 21 Years compleat the said — has given in to me the *Accompts* of his Intromissions, &c. Therefore, wit ye me, now after my full and perfect Age of 21 Years compleat to have Exonerated, &c.

In the rest of the Clauses of the Discharge, in place of *Tutors* you write *Curators*, or put both *Tutors and Curators*, or *Factor*, according to the Circumstances of the Parties.

Of Discharges granted by a Constituent to his Factor.

THE Stile of such Discharges may be known from what is above-set down, however, for example, take this following—*Be it known, &c. me A. Forasmuch as, I did upon——grant a Factory to B. to uplift the Sums of Money, viz. (here narrate the Sums, the ground of Debt, and the Debtors Name, in a brief way) as the said Factory Registered, &c. more fully proports; As also the said B. by his Receipt of the date of the foresaid Factory, doth acknowledge that he had in his Custody the saids three Bonds, belonging to me, with——of Money, and that he was to lend out the Money, (and what annual-rents he should recover of these Sums,) upon Bond, to be taken to my self as the said Receipt bears, And likewise the said B. having uplifted the foresaid Sum of——which was due by C. with the Annualreat thereof, from Whitsunday 1710, to Witsunday 1715, he did imploy and lend out the same to the deceast F. and took a Bond therefore by him and G, &c. having made up the same to the Sum of——and for which he likewise received a Bond of Corroboration by H. dated——As also the said B. having upon——received from I. in my Name, the Sum of 1000 Merks Money foresaid, which*
he

he did then lend out to K. upon Bond and Security given by him and his Son, being with the Annualrents thereof made up to 1200 Merks at the Term; And likewise, the said B. his Missive Letter dated—— doth acknowledge that he had received 1000 lib. of mine from L. and whereby he promiseth an Accompt how he has disposed upon it, and accordingly having uplifted the 600 lib. that was due by F. and —— he imployed the same and Annualrents thereof, and the said 1000 lib. upon a Bond granted by the said F. as Principal, and —— as Cautioner, to me, of the date —— bearing Interest from Whitsunday in that Year; And in like manner, the said B. having pursued N. as Heir to the said D. for the Sum above-specified due by him, he did upon —— obtain a Decreet before the Lords of Council and Session, against the said N. for the samen, and upon —— he procured from N. a Bond of Corroboration, whereby the Annualrents resting at Candlemas 1684, were Accumulated to the principal Sum, and in which —— is also Cautioner in manner therein exprest, And now seeing, the said B. hath given up to me the foresaid Bonds granted by —— for the 2400 lib. with the original granted by D. and Decreet obtained against N. and the Registred Bond of Corroboration thereof granted by him and —— for 1793 lib. and Letters of Horning, Inhibition, and Adjudication upon the said Bond of Corroboration; As also, a Bond

by the said E. as Principal, and _____ as
 Cautioner for 1876 lib. and a Bond by _____
 for 1200 Merks, with an Assignment granted
 for farther Security of that Debt by _____ with
 all which I hold me well Contented and fully Sa-
 tisfied, Therefore wit ye me, to have Exo-
 nered, quite Claim'd, and simply Discharged ;
 Likeas, I &c. the said B. his Heirs and Exe-
 cutors of the Factory above-mentioned, and of
 the Missive Letters, Receipts and Obligation
 above-specified, and of the whole Sums of Money
 contain'd therein, in so far as he was lyable to me
 therefore, and of all Action and Execution Com-
 petent, or that may be Competent to me against
 him thereanent ; which Discharge, I bind and
 oblige me, my Heirs and Executors, to war-
 rand to be to the said B. and his foresaids a suffi-
 cient Exoneration concerning the Premisses, at
 all Hands, and against all deadly ; and I do
 hereby ratify the Discharge granted by him to
 _____ Son and Heir to the deceast C. of the
 Sum above-specified that was due by his Fa-
 ther.

Of Discharges of Depending Pro- cesses and Decrees.

IN Discharges of Depending Actions, you
 briefly Narrate the Summons, and all
 that has followed thereon, as the In-
 terloquitors of Court ; if any be, and Sub-
 sumes,

sumes, that the Defender has satisfied the Claim, or the like, Expressing the true Matter of Fact, or in general thus. *And now seeing for certain Onerous Causes and Considerations, it is agreed, that I should, (or I'm Content to) Grant the Discharge under-written, Therefore, &c.*

But all this will be better illustrated by the following Discharge of a Decreet —
Be it known, &c. Me A. Forasmuch as B. having an Action and Cause of Spuilzie Depending before the Lords of Council and Session, against Umquhile D. for the Wrongous, Violent and Masterful Spoliation from him, of the Goods and Gear under-written; upon the which Dependance, the said B. raised Letters of Inhibition against the said Umquhile D. which were duly and lawfully Executed at his Instance, upon the ——— Day of ——— &c. Years, The said B. thereafter Made and Constituted me the said A. his Cessioner and Assigney, in, and to the said Action, which was then Depending before the saids Lords, with all that might Result and follow thereupon, and Transferred his Right thereof into my Person, and Surrogated me in his Place thereof as the said Assignment of the Date, &c. at more length bears, And by reason the said Action was Intended before the Date of the said Assignment at the Cedents Instance, I insisted in Pursuit thereof, and obtained Decreet of Spuilzie therein, against the said Umquhile D. Decerning her to have done

wrong, in the Wrongous, Violent and Masterful Spoilzieing from the said, &c. Cedent in the Moneth the &c. Pryce, &c. of &c. And therefore, Decerning the said Umquhile D, to Restore and Deliver the saids Goods and Gear, or else the Avails and Prices of the samen respective foresaid, and also to make Payment to the said &c. of the Sum of &c. of Expenses, as the said Decreet at more length bears; Whereof she made no Payment at no time before her Decease. And therefore, I the said &c. Assigny above-named, Intented Action before the saids Lords of Council and Session, against ——— as universal Intrometters with the Goods and Gear of the said Umquhile, &c. since her decease; and upon the ——— Day of ——— I obtained Decreet before the Lords of Council and Session against them, Decerning them to Content, Pay and Deliver to me as Assigney foresaid, the Goods Gear and others above-written, or the Avails and Estimation thereof, as the Prices contained in the said Decreet, and to make Payment to me of the saids Expences, as the said last Decreet at more length bears: Upon the which Decreet, I raised Letters &c. and by vertue thereof, caused Charge &c. the said &c. Likeas, the saids ——— for their Contempt and Disobedience were upon the ——— Day of ——— orderly Denounced &c. as in the Letters of Horning, Execution and Denunciation, at more length

is contained: And now, because the said —
 ———— for Obedience of the saids Decrees
 and Letters, and in satisfaction thereof, has
 presently Made and granted to me an Obligati-
 on, containing the Sum of ——— Money of this
 Realm, viz. the one half thereof to be Payed to
 me, my Heirs and Assignes, betwixt the Date
 of thir Presents, and &c. Therefore, &c.

So there's in effect no difference, but in
 the Narration of the ground of Debt, for
 a Decreet, in order to a Discharge, may
 be variously narrated, and more briefly than
 in the preceeding Example, thus, — Be it
 known, &c. us ——— Forasmuch as, upon
 the ——— Day of ——— last bypast, we obtained
 an Decreet before the Lords of Council and Ses-
 sion, against ——— and certain other Persons
 therein contained; Decerning and Ordaining
 them to Warrant Free, Relieve and Skaithless
 keep us, and each of us, our Heirs and Execu-
 tors, of an Duty of ——— Merks Money —
 of Expences for ilk Terms Failzie, and of all
 Coast, Skaith, Damnages and Expences which
 we have sustained, or shall sustain, or In-
 curr therethrough, and for not Reporting and
 Delivering to us sufficient Acquittances and
 Discharges thereupon, for our better relief
 thereanent, And also to make Payment to us of
 the Sum of ——— for the Charges and Ex-
 pences already sustained by us, conform to the
 said Decreet, for the Reasons and Causes there-
 in contained, as the samen of the Date foresaid,
 at

at more length bears, whereupon we Raised Letters of Horning, and by vertue thereof, caused Charge and Denounce the said ——— to the Horn, for not Observing, Keeping and Fulfilling to us of the said Decreet conform thereto. As also, we have caused Take, Apprehend and Incarcerat the said &c. within the Tolboth of ——— where he presently remains, ay, and while he fulfill to us the said Decreet, in all and sundry the heads and points thereof above-written, conform thereto. And now, Forasmuch as, for obedience of the said Decreet Letters and Charges Raised thereupon, the said ——— has made Payment to the said ——— of ——— Money foresaid, contained in the said Decreet, and has Purchast and Delivered to us a sufficient Acquittance, and Discharge from the said ——— and of the said Penalty of ——— Money, for each Terms Failzie; As also, has Satisfied and Contented me the said ——— of the said Sum of ——— of Expences and Charges sustained by me in manner foresaid, of the which Discharges and Sums of Money, we grant the Receipt, and hold us well Contented and satisfied: Therefore, wit ye us to have exoner- ed, quite claimed and simply Discharged, and by the Tenor hereof, all with one consent, and assent, we Exoner &c. the said ——— and all other Persons above-mentioned contained in the said Decreet, and each of them, their Heirs Executors, Assigneys and all others whom it effects,

effeirs, of the said Decreet, and of all Letters of Horning, Poinding, Inhibition, Arrestment, Caption, and others raised thereupon, with the Executions thereof; and all that has followed, or that may follow upon the same. And we grant the said Decreet, and all that has followed, or may follow thereupon, to be duely Satisfied, Keeped and Fullfilled by the said Persons to us, conform thereto, in all points; Likeas, we have instantly delivered to the Persons above-named the said Decreet, with the Letters of Horning, Poinding, Inhibition, Arrestment, and Caption raised thereupon, with their Executions, to be Cancelled and Destroyed by them for ever, or otherwise used by them at their pleasure, which Discharge above written, we Bind and Oblige us to Warrant to them at all hands &c.

A Discharge of an Advocation of a Service.

I A. with Consent of ——— for certain good Causes, &c. moving us by these presents, Discharge the Advocation and Charge following thereupon, Raised at our Instance against ——— Whereby the Brieves and Service of the said ——— as Heirs to Umquhile ——— was by the saids Letters of Advocation stayed, and the Sheriff of ——— and his Deputs, Discharged of all further preceeding. And by these presents, we Consent and are Content, that the

*the saids ————— be Served and Retour-
ed Heirs to Umquhile ————— and that these
Presents shall be an sufficient Warrant to the
said Sheriff of ————— and his Deputs, to proceed
in the Service of the said ————— Brevis as
Heirs foresaid, notwithstanding of any Advoca-
tion Raised by us, or any other Impediment
whatsoever that can be alledged or proponed by
us in the contrar by these presents, &c. Re-
gistration.*

When one Purchasses a Land Estate a-
gainst which real Diligence has been used,
which is Payed by the Price, and the Pur-
chasser inclines to keep still the said Dili-
gence, and for his better Security makes
use both of it, and the Voluntar Right, in
which Case, it is just, that the Debtors
Person, and his other Estate Moveable or
Immovable be made Free, which Discharge
is in this Form.

*Be it known &c. me A. (here narrate the
ground of Debt, and Writs to be Discharg-
ed with the Rights thereto) And now for cer-
tain Causes and Considerations moving me, Wit-
ye me to have Exonerated, Quite-claim'd, and
simply Discharged, Likeas, &c. the said B.
His Heirs and Executors of all real and personal
Execution that may be used against him, as
Heir or Apparent Heir to the Deceast —————
or against the Lands and Estate Heretable and
Moveable pertaining, or that shall pertain to
the said B. for the Debts and Sums of Money par-*

particularly above-mentioned, contained in the
 foresaid Comprising and grounds thereof without
 prejudice nevertheless, of the said Comprising,
 in so far as, the same may affect the Lands,
 Teinds, Coal-heughs, Salt-pans, and others a-
 bove-specified Apprysed thereby, and without
 prejudice to me of my Right to the said Lands,
 by vertue of the same Comprising: And fur-
 ther, I by these presents, Exoner, Quite claim,
 and simply Discharge the said B. his Heirs and
 Executors, of all real and personal Execution
 that may be used against them, their Lands and
 Estate, Personal or Real, for Payment of the
 foresaid Sum of ——— with the Annualrent
 thereof, and Liquidat Expences contained in
 the Bond of Provision above-specified, Granted
 by him to me, And I do hereby Declare,
 That the said B. his Heirs, Executors and
 other Representatives, are hereby, and shall be
 fully Liberated, Freed, and Discharged of all
 Execution Competent, or that may be Compe-
 tent to be used for the Sums before-mentioned,
 contained in the foresaid Comprising, and Bond
 of Provision against them, their Means or
 Estates Heretable or Moveable, or any Part or
 Portion thereof, by whatsoever manner of way,
 and that I shall not Trouble, Molest nor Distress
 them thereanent, nor prejudge them therein any
 way whatsoever, and that I shall only make use
 of the Debts specified in the foresaid Com-
 prising and Bond of Provision for affecting the
 said Lands of ——— Coal-heughs, Salt-pans,
 A a Teinds

Teinds and Pertinents thereof; And therefore, it is also declared, that notwithstanding of this Discharge, it shall be Leisom, without prejudice to me, to Comprise or Adjudge from the said B. as charged to enter Heir in special to the said—the said Lands of—and others contained in the foresaid Apprysing, for the Sums contained in the foresaid Bond, and to affect the said Lands therewith, and the said Debts hereby Discharged, are to have no further Force, Validity nor Effect, nor are to be made use of by me or my foresaid, but allenarly for affecting the said Lands of—and others specified in the said Apprysing formerly led at my Instance, and no further.

In another Form thus—and seing the whole principal Sums above-mentioned were allowed by the said B. and C. to D. and E. in the first end of the Price of the half of the Lands of—which were Disponed irredeemably to them by the said B. and C. and their Creditors in manner mentioned in the two severall Dispositions made thereanent, both dated—whereupon it was conditioned that the said D. and E. should procure to the said B. and C. and their Constituents above-named, a Discharge of all Action both Personal and Real competent against them and their Estate, Heretable and Moveable, by vertue of that Wadset Right, Heretable Bonds and Infeftments abovementioned, except in so far as the same might militate for their further security and possession of the Lands and others
Dis-

Disposed to them by the said B. and C. And also seeing the said D. and E. by their two several Dispositions of the Date &c. have Disposed in favours of me and my foresaid, their respective halves of the half of the foresaid Lands of——— and have likewise procured the Dispositions and Assignations of the several Heretable Rights above-rehearsed to be granted in my favours, upon condition that I should grant this present Discharge in the Terms after-specified, for fulfilling of the Obligement made by them to the said C. thereanent; Therefore wit ye me, as having Right in manner above-written, to have Exonerated, quite Claim'd, and simply Discharged; Likeas, I by these presents Exoner, &c. the said B. and C. their Heirs and Executors and also the Heirs and Executors, and other Representatives of the said Umquhile J. and all others whom it effeirs, of all personal Execution competent, or that may be competent to me, my Heirs, Executors or Assignneys, against them, or any of them, or their foresaids, upon the Bonds above-mentioned granted to the said P. and J. and Bond of Corroboration thereof, and sicklike, upon the two Bonds above-rehearsed granted to the said D. and his Spouse, and also upon the Contract above-specified, past betwixt the said J. and the said Umquhile J. and C. or upon any of the said Rights, for the Sums of Money, Principals, Annualrent and Expences respective above-written therein contained, or any part thereof; And also, of all real Execution com-

petent, or that may be competent to me, or my
 foresaid therefore, against any of the saids
 Debtors, their Lands and Estate, presently ap-
 pertaining, or which shall happen to pertain to
 them, or any of them, excepting allenary the
 half of the saids Lands of ——— with the Per-
 tinents disposed by the said J. and C. to the
 said D. and E. and by them to me as is above-
 mentioned; for farther security whereof, it
 shall be Leisom to me and my foresaids, notwith-
 standing of this present Discharge, to Appryse
 or Adjudge the same upon the said Bonds and
 Contract, and to use what further Execution
 shall be necessar in order thereunto, which Dis-
 charge above-written, according to the Quality
 above-specified, I bind and oblige me, my Heirs
 and Successors, to warrant, &c.

Sometime it happens that Cautioners or
 others who have Corroborated the origi-
 nal Bonds, are Discharged, and yet all
 competent Execution against the Principal
 is reserved by the Creditor; the which
 Discharge may be in this or the like Stile
 ——— And seeing when the said H. did assign to
 me the foresaid Bond of Relief granted by the
 said ——— and Decreet of Suspension following
 thereon against the said ——— and his Cau-
 tioner, and to the Annualrents above-mention-
 ed, which the said H. had payed, I did then
 undertake and oblige my self to procure from the
 said E. a valid Assignment and Right to the
 fore-

foresaid Bond granted to her and her said Mother by the said M. and Cautioners above-named, of the said Sum of 7000 Merks and of the Infestments of Annualrent foresaid following thereupon, and of the said Annualrent from and after the Term of Candlemas 1670, and of the principal Sum above-specified, whereupon the Sum is redcemable, and having obtained the said Assignment and Right thereto, I obliged my self to Discharge the said H. and the said W. and also the Representatives of the said Umquhile M. of the Bonds above-specified and Sums contained therein, in manner aftermentioned, without prejudice to me of the said Infestment of Annualrent out of the Lands foresaid as is after exprest; And in respect that I have now acquired the said Assignment and Disposition as is above-narrated: Therefore wit ye me, as having Right in manner foresaid, to have Exonerated &c. Likeas, &c. the said B. Cautioner above-named in the foresaid Suspension, his Heirs and Executors, of all Execution Real or Personal, that is or may be used against him upon the Bond of Cautionry above specified, and Decreet of Suspension foresaid following thereupon, and of the same Bond and Decreet, Sums of Money, Principal, Annualrents and Penalty above-specified, contained in the said Bond granted by the said deceased M. and his Cautioners to the said E. and F. and their foresaid, and in the said Bond granted by the said W. for payment of the Sums above-

written, to the said E. and F. and their fore-
said; and in the said Bond of Cautionry in
the Suspension foresaid, raised by the said —
whereby the said B. as Cautioner for the said
W. is obliged to have made payment to the said
E. and her said Mother, of the Sums of Money
above-written, contained in the Bond granted to
them by the said M. and his Cautioners and of
the foresaid Penalty of 1000 Merks specified in
the Bond of Relief granted by the said W.
thereanent, after the discussing of the Sus-
pension above-specified, whole Tenors and Con-
tents thereof, and of all Letters of Horning
and Inhibition, if any be raised and Executed
thereupon against him, and of all other Diligence
that has followd, or may follow upon the same
for now and ever; which Discharge above-
written, I bind and oblige me to warrant to be
a sufficient Exoneration to the said B. con-
cerning the Premisses at all hands, &c, And I
bind and oblige me to warrant and relieve him
and his foresaid, of all Cost, Skaith, Damage,
Expences or Interest, that they shall happen to
sustain or incur through the said Bond of Cau-
tionry, or by the said B. his becoming bound and
obliged therein as Cautioner for the said W.
in manner foresaid in any sort, without prejudice
to me of the said Infeftment of Annualrent out
of the Lands above-exprest, ay and while I get
payment of the Sums of Money, Principal and
Annualrents (whereunto I have Right) from
the said W. Heretor of the said Lands out of
which

which the same is appointed to be uplifted, and who is obliged to pay the same by the Bond above-written, and to relieve the said B. of his Cautionry, conform to the Clause of Relief therein-mentioned, but no ways to use Execution for the same, against the said B. as said is.

A Discharge of a Bond of Interdiction.

THO' Bonds of Interdiction are perpetual and last so long as the Interdictors, or a Quorum of them, with the party Interdicted, Live; yet he may come to better Understanding and more sober Manners, and be fit for mannaging his own Affairs; in which Case the Bond may be Discharged, which is done in this Form: — Be it known, &c. us A. B. C. Forasmuch as (here narrate the Bond of Interdiction and then subsume; And we considering that the said D. is of considerable Age, and that he hath sufficient Knowledge, Capacity and Experience, for right Administration, Management, Governing and ordering of his own Affairs, and that there is now no use of the foresaid Interdiction; But that it is just and reasonable that he be Liberated, Freed, and Loosed therefrom, that he may Administrate, Govern, and Order his own Affairs, by himself at his pleasure, without our Consent had thereto. Therefore wit ye us, the said A. B. and C. the only Persons now on Life of
the

the said five Interdictors, all with one consent, To have Exonerated, quite Claimed, and simpli-
citer Discharged, As we by these presents Exo-
ner, &c. the Bond of Interdiction above-men-
tioned, granted by the said D. to us, Letters of
Publication, and Registration thereof, and all
that may follow thereupon: And we all with
one Consent and Assent, do hereby Liberate and
Loose the said D. from the same, and we are
content, and do hereby consent, that the said
D. by himself alone, without Consent of us, or
of either of us, may freely grant Bonds, Obli-
gations, &c. (as in the Bond of Interdiction)
sicklike and as freely, &c. as he did and might
have done, &c.

But if the Interdiction was Judicial, such
a Discharge by the Interdictors is not suf-
ficient; the only means to remove such,
is by Process of Declarator; *nam nihil tam
naturale est quam unum quodque eodem modo dis-
solvi quo colligatum est.*

Not only Claims and Rights, which are
Constituted and Liquid, can be Discharged;
but also these whereunto our Right is only
in Appearance, and in *Spe*: Such are, Re-
nunciations to be Heir, and Discharges
of all that one can ask or Claim, by and
through the Decease of a nearest of Kin,
Parent, Brother, or other Blood-Friend.

A Renunciation to be Heir, is in this
Stile; *Be it known &c. me A. edlest lawfnl
Son and Apparent Heir to the deceast* —

my

my Father, Forasmuch as there were Letters purchast, and Charges executed against me, at the instance of B. Charging me to enter Heir to my said deceast Father within fourty Days, conform to the Act of Parliament, to the effect that he may intent and pursue all Actions and Causes competent to him, for himself, and as Assigney constituted by diverse and sundry Persons against me, as Heir to my said deceast Father; with Certification to me, if I failzied therein, the said 40 Days being bypast, that the said B. shall have such like Proceß, Action and Execution against me, as if I were Entered, Served and Retoured Heir, to my said Deceast Father; notwithstanding that I in manifest Defraud of him thereanent, wrongously ly forth and will not enter, as said is; As the said Letters, and Summons raised thereupon, and Executions thereof, at more length proports. And seeing I am not resolved to enter Heir to my said Deceast Father, in respect I may incur great Skauth therethrough; Therefore, wit ye me, to have renounced, Likeas, I by these Presents renounce to enter Heir to my said deceast Father, and I quite all benefite competent, or that may be competent to me as Heir to him; and I am content and by these presents consent, that the foresaid B. for himself or as Assigney foresaid, have Action and Execution, for all Debts Resting by my said Deceast Father to him, for himself or as Assigney foresaid, contra hæreditatem jacentem & bona mobilia pertaining to

my said deceast Father, the time of his decease, as accords of the Law. Registration: Ad futuram rei memoriam.

Discharges of all that one can ask through the decease of a Parent, are seldom or never in Writes separate, but more frequently conjoin'd to others; as Contracts of Marriage, to which we refer them.

Thus much concerning Discharges of Personal Claims, and of Moveable Rights, we come now to treat of Discharges or Renunciations of Real and Immovable Rights, as of Infestments of Annualrent, of Wadsets, Apprisings, or Adjudications, or of the Reversions competent to the Wadsetter, or Debitor in the Comprising, and also of Liferent Rights, &c.

A Discharge and Renunciation of an Infestment of Annualrent, by the principal Creditor, to the original Debitor.

BE it known &c. me A. Forasmuch as B. and C. by their Bond, &c. (here narrate the Bond and the Requisition mentioned in the said Bond) and there being only 40000 Merks required at one Term, with the Sum of 4000 lib. Money foresaid, of liquidat Expences for each Terms failzie, together also

also with the Annualrent and Profite of the said whole principal Sum, Tearly and Termly, at Candlemas and Lambmas by equal portions, beginning the first Terms payment thereof at Lambmas then next to come, now last bypast, for the half Year preceeding that Term, and so furth Termly thereafter, at the Terms above-specified, by equal portions, during the not-payment of the said principal Sum, with the Sum of 200 lib. Money foresaid of Liquidat Expences, for each Terms failzie through the not-payment of the said Annualrent, toties quoties; And for further Security thereanent, the said B. and C. bound and obliged them, conjunctly and severally, and their foresaids, duly and lawfully to Infeft and Sease me in Liferent, and ——— which failzieing, &c. Heretably and irredeemably, under Reversion always in manner after-specified, and under the Reservations, Provisions, and Conditions, after-mentioned; in all and whole an Annualrent of 4800 Merks Money foresaid, Tearly to be uplified at Candlemas and Lambmas, by equal portions furth of the Lands and Barony of L. &c. or furth of any part &c. and that by two several Infeftments to be holden, and with absolute Warrantice in manner mentioned in the said Bond, whereby, the said Annualrent is provided to be Redeemable by the saids B. and C. their Heirs or Assignes, by real payment making &c. in manner, and upon the premonition specified in the foresaid Bond,

whereby there is reserved ~~always~~ to me the said A. at any time of my Life, &c. Conform whereunto, and precept of Seasin, &c. Likeas, the said B. having caused premonish me, to receive at Lambmas last, 80000 Merks, with an Terms Annualrent thereof, from the Candlemas preceeding that Term; And hath accordingly at the said Term of Lambmas last bypast, made payment to me of the foresaid Sum, with 2400 Merks for the Annualrent thereof from Candlemas to Lambmas in this instant Year 1715, whereof I grant the Receipt, renouncing all Exceptions, &c. Therefor, wit ye me, as having Power, by the expresse Quality of the Bond above-written, to have granted and confessed; Likeas, I &c. The said Annualrent of 4800 Merks correspondent to the said Sum of 80000 Merks, now presently paid, to be duly and lawfully Redeemed from me, and my said Son, by the said B. and C. And in testimony thereof, I as having Power in manner above-written, do hereby not only Exoner, quite Claim and simply Discharge them, their Heirs and Executors, of the said Sum of 80000 Merks, and of the Annualrent of the said Sum, from Candlemas last in this present Year 1715 and of the Termly Failzies and liquidate Expences effeiring thereto, and of the said Bond it self, and of the Instrument of Seafine following thereupon: But also, I as having Power in manner above-written by these presents Renounce,

quite

quite Claim, and simply Over-give, from me and my said Son, our Heirs and Assignneys, to and in favours of the said B. and C. and their Heirs and Assignneys whatsoever, the foresaid Annualrent of 4800 Merks correspondent to the said Sum of 80000 Merks, with the Bond, and Infeftment above-specified following thereupon, and whole Obligements thereof, conceived in favours of me, and my said Son; And that I may be fully denuded of the said Annualrent, I by these presents make, and constitute———Procurators, to Resign, &c. Likeas, I as having Power in manner above-exprest, do hereby Resign, &c. all and whole the foresaid Annualrent of 4800 Merks contain'd in the foresaid Bond and Seasin, with the Bond and Seasin themselves, in the hands, And in favours, of the said B. and C. their Heirs or Assignneys, my immediat Superiors thereof, ad perpetuam remanentiam, to the effect that my Right of Property of the said Annualrent hereby Renounced and Resigned, being consolidated with the said B. and C. their Right of Superiority thereto; all and whole the foresaid Lands and Barony of L. with the Pertinents, lying and comprehending, as said is, may remain and abide with, and be bruiked and possesst by them and their foresaid, As free of the burden of the Annualrent hereby Renounced, As if the same had never been granted; And thereupon to take Instruments, which I promise to Ratify; Which Discharge, Resignation and Renunciation above—

bove-written, I bind and oblige me, my Heirs, Successors, and Executors, to warrant to the said B. and C. and their foresaid, at all hands and against all deadly: Consenting to the Registration hereof in the Books of Council and Session, general or particular Register of Sasins Renunciations, &c. or Books of any other Judicatory competent, &c. ad futurum rei memoriam; and if need be, &c.

If the Heretable Bond, was in favours of a Man, and his Wife in Liferent, and to his Eldest Son *nominatim* in Fee, containing a Faculty to the Father to uplift the Money and give Discharges. This Faculty is narrated with the Bond, and in the Clause of Discharge, you say, Therefore, wit ye me, as having Power by express Quality of the Bond above-written, to have Granted and Confessed. &c. But also, I as having Power in manner above-written, by these presents Renounce, &c. And so furth in the other Clauses.

If the Lands, out of which this Annual-rent was upliftable, be sold to another, in that case, the Renunciation must be in favours of the Purchasser, as well as of the original Debitor; and Resignation *ad remanentiam*, must be made in his hands, thus, — by these presents Renounce, quite Claim, &c. to and in favours of the said B. (the Debitor) and C. who has now acquired Right to the

the Lands and others above and after-specified, out of which the said Annualrent is to be uplifted, their Heirs and Assignneys whatsoever, &c. And in the Resignation, thus, — In the hands, and in favours of the said B. (the Debitor) his Heirs or Assignneys, my immediat Superiors thereof, ad perpetuam remanentiam, and in case the said C. (the Purchasser) be infest in the foresaid Lands and Superiority of the foresaid Annualrent, then in the hands and in favours of the said C. his Heirs or Assignneys, my immediat Superiors thereof for the time, ad perpetuam remanentiam; to the effect that the Right of Property of the foresaid Annualrent, being Consolidated with the said B. and C. respective for the time, their Right of Superiority, all and whole the foresaid Lands, &c.

In case the half of the principal Sum be paid, the Discharge and Renunciation, must only be of the half of the Annualrent: The Heretable Bond, Infestment, and Premonition, if any be made, being narrated in common Form; the grant of Redemption is thus, — *Confess the equal half of the said Annualrent of 4800 Merks correspondent to the said Sum of 40000 Merks, now presently paid, to be duly and lawfully Redeemed &c. — Discharge of the said Sum of 40000 Merks as a part of the said Sum of 80000 Merks, and of the Annualrent of the said Sum of 40000 Merks from Candlemass to Lambmass in this*
pre-

present Year 1715, and of a proportional part of the termly Failies and liquidat Expences effeiring thereto, and of the said Bond it self, and of the Instrument of Seasin following thereupon, in so far only, as can be extended to the Sums hereby Discharged, so that the same Bond, and Seasin, is from this time forth, to be restricted to, and to stand only, for 40000 Merks of principal Sum, and an Annualrent of 2400 Merks Yearly, and the proportional part of the Expences, and Termly Failies effeiring thereto: But also, I by these presents Renounce, &c. from me, &c. the fore-said Annualrent, as in the preceeding Stile of Discharge and Renunciation.

A grant of Redemption, Discharge and Renunciation of a Wadset, granted by a Factor; the Lands being Holden of the Wadsetter's Superior, is in this Form—Be it known &c. Me A. Factor and Commissioner specially Constitute by B, for uplifting and receiving, all and whatsoever Sums of Money, both principal Annualrents, and Back-tack Duties, resting unpaid, or that should be resting, to the said B. by Bonds, or by Contracts of Wadset, Decreets, or otherways, by whatsoever Person or Persons, and specially without prejudice to the generality foresaid, of the Sum of———due by C. and upon receiving payment to grant Discharges and Renunciations one or moe, and such other Writs as should be requisite, and to oblige him and his Successors in absolute Warrantice thereof, conform to the Factory and Commission
granted

granted by B. to me, of the date Registered
 ——— Forasmuch as, (here was narrated
 a Contract of Wadset in common form)
 And seeing the said C. hath made Payment to
 me, by order from, and in name and behalf of
 the said B. of the Sum of ——— as a part of
 the said Sum, and of the Annualrents or Back-
 Tack-Duties, of the said whole Sum extending
 to ——— from Martinmas 1714, to Whit-
 sunday last in this instant Year, 1715. the
 Back-Tack-Duties preceeding Martinmas
 last being paid then and before, to the said
 B. himself, conform to his Discharges gi-
 ven thereof; and which Sum of ——— as
 Principal, and ——— as Back-Tack-Duties;
 I have applyed and imployed to the use and be-
 hoof of the said B. and for doing his necessary
 Affairs: Therefore, wit ye me, as Factor
 and Commissioner foresaid, and as having Pow-
 er in manner above-mentioned, to have granted
 and Confessed, As I, by these presents grant
 and confess the Lands, Barony, and other An-
 nualrent-Wadset, as said is, in so far as con-
 cerns the said Sum of ——— and byrun Back-
 Tack-Duties till Whitfunday last in this in-
 stant Year 1715, To be duly and lawfully Re-
 deemed, from the said B. my Constituent, by
 the said C. And in testimony thereof, I do
 hereby not only Exoner, quite Claim and simply
 Discharge the said C. his Heirs and Exe-
 cutors of the same Sum of ——— as a part of
 the said Sum of ——— and of the whole An-
 nualrents

nualrents of the said principal Sum of ———
 till Whitsunday last, and of ——— of the said
 Back-Tack-Duty Yearly, effeiring to the Sum
 now paid, in all time after Whitsunday last,
 and of a proportional part of the Termly Failzie
 effeiring thereto, and of the foresaid Contract it
 self, and Registration following thereupon; in so
 far only as may be extended to the Sums hereby
 Discharged, so that the same Contract of Wadset
 and Back-Tack Duty, and Reversion, is from
 this time forth to be restricted and to stand only
 for ——— of principal Sum, and ——— of
 Back-Tack-Duty Yearly; But also, I as having
 Power in manner above-exprest, do by these
 presents, Renounce, quite Claim, and simply
 Over-give, from the said B. my Constituent,
 his Heirs and Assignes, to and in favours of the
 said C. his Heirs of Tailzy and Provision suc-
 ceeding to him in his Lands and Estate of ——— the
 Lands, Barony, and others above-mentioned,
 following thereupon, and whole Obligation there-
 of conceived in favours of the said B. and that
 allenarly, in so far as concerns the said Sum of
 ——— and Back-Tack-Duty, hereby Dis-
 charged, as said is; And that he may be fully
 Denuded of the Wadset, so far as concerns the
 Sum now Discharged; I by these presents, as
 having Power in manner above-exprest, now as
 if the said B. were already Infeft and Seas'd in
 the said Lands and Barony, and then, as now,
 make and constitute ——— and every one of
 them,

them, Conjunctly and severally his very lawful Procurators for him, and me as his Commissioner, and in our name, to Resign, Surrender Overgive and Deliver; And I as having Power in manner above-mentioned: Do hereby resign, &c. all and whole the Lands and Barony and others above-rehearsed, contained in the foresaid Contract of Wadset Right, In so far as concerns the said Sum of———In the hands of my said Constituents, immediat lawful Superiors thereof, presently being, or that shall happen to be for the time, or of his and their Commissioners having power to receive Resignations, in his or their Names, In favours and for new Infestment of the same, to be made and granted to the said C. and his Heirs of Tailzie, and Provision succeeding to him in his Lands and Estate of D. to the effect, that the foresaid Lands and Barony of J. and others contained in the foresaid Wadset, may be bruiked and possesst by him and his foresaids, free of the burden of the said———now payed and renounced in all time coming, and thereupon to take instruments, and to do every thing needful thereanent, that I or my said Constituent may do, our selves if we were present, and which I promise to ratify: Which Discharge, Renunciation and Resignation above-written: I by vertue of the foresaid Factory and Commission, and power given to me thereby, Bind and Oblige the said B. his Heirs and Executors, to warrant to the said C. and his foresaid, at all hands and against all dead-ly,

ly; Likeas I bind and oblige me my Heirs, and Executors, to cause the said B. and his Heirs, Renew this present Discharge and Renunciation, when ever we shall be desired for that effect: till the said C. and his foresaids be sufficiently secured thereanent; Registration in the Books of Council and Session: general or particular Register of Renunciations, Seasins, &c. or any other competent Register within Scotland, therein, to remain ad futuram rei memoriam, and Letters, if need be.

A Creditor having Adjudged the Lands and Estate belonging to the Principal and Cautioners, he at the earnest desire of the Principal, being to Discharge one of the Cautioners, and to Renounce the benefit of the Apprysing, in so far as concerns his Lands: The Tenor of this Discharge and Renunciation, is as follows.

Be it known, &c. Me A. Forasmuch as, (here narrate the Bond and Apprysing, and other Diligence, with the Decreet, Assignment or Translation made to the Discharger) And seing I the said A. am so far satisfied with the Security I have of the Lands and Estate which did belong to, and were Comprised from B. principal Debitor, and his other Cautioners for the said Debt, that I do not intend, to use any Diligence for the same against C. or any of the Representatives of the said Deceast C. his Father, but am willing to grant the Discharge

charge under-written, Therefore, wit ye me at the desire, and with the special Advice and Consent of the said B. to have not only Exoner- ed and Discharged, As I by these presents with consent foresaid, Exoner and Discharge the said C. his Heirs and Executors, and all the Representatives of the said Deceast C. of all Action and Execution competent to me against them, by vertue of the Bond above-mentioned, granted to the said Umquhile ——— or by ver- tue of the Comprysing following thereupon, where- unto I have Right in manner above-written, for now and ever: But also to have Renounced quite Claimed, and simply Discharged and O- ver-given, as I by these presents &c. all Right and Interest that I the said A. by vertue of the Comprysing above-mentioned and Disposition, and other conveyances made to me of the same, have or can pretend to the Lands and others above-rehearsed, or to any part thereof, which pertain'd to and were Apprysed from the said Deceast C. his Heirs and Successors, for now and ever. Which Discharge and Renounciati- on, I the said A. Bind and Oblige me, my Heirs and Executors, to warrant from my own proper Fact and Deed allenarly, to wit, that I have not granted, and that I nor my foresaid shall not grant any Right or Disposition of the foresaid Apprysing and ground thereof, that may be hurtful or prejudicial hereto in any sort, Declaring nevertheless, that these presents are granted by me, without receiving of any Money,
or

or Gratitude or good Deed, but freely and willingly at the earnest desire and request of the said B. and with his consent. And farther, it is hereby provided, that in case these presents, shall be obtruded against me in any Action Pursued, or to be Pursued at the instance of me, my Heirs or Assigneys, against the Tennents or Introuetters with the Mails and Duties of the other Lands, contained in the said Apprysing; and of the Lands contained in another Comprysing led for the same Sum, against the said B. the principal Debitor, in any Action Pursued or to be Pursued against his Representatives, or the Representatives of any others of the Cautioners; then and in that case, the same shall be Null and of none Avail, force, strength nor effect, as if it had never been granted, and shall not militate against me, to hinder or stop any Action or Execution against the Representatives of the principal Debitor or the other Cautioners, or against their Means, Lands or Estate: But that I may notwithstanding hereof, still use Diligence against them for their Lands, and for recovering Payment of the Sums above-mentioned; sicklike and as freely in all respects, as if these presents had never been granted, upon which expresse Provision this Discharge is granted and accepted and no other wise. Registration for preservation allenarly.

One having acquired Right by Adjudication or Disposition to some Lands, or got
Dis-

Disposition of the like Diligence, for further Corroboration of his Rights, obtains a Gift of the Ward, Non-entrie, or the like Casualties, of the whole Lands and Estate, that belongs to the Proprietar, from whom the Lands were Adjudged; These Gifts do affect the whole Estate, wherefore the Proprietar for certain Onerous Causes, obtains from the Donator his Creditor a Discharge of the same, in so far as concerns his Estate not Adjudged, and a Declaration that they shall only be made use of, for the better securing of the Rights of the Lands Adjudged: Which Discharge and Declaration is in the Form and Stile under-written.

Be it known &c. Me A. Forasmuch as, (here the said Rights, Disposition and Gifts were narrated in the common Form, and then follows the Cause and Motive in this Stile :) And seeing, *it is not our intention to make use of the foresaid Rights, but only for securing us and our said Son, in the Lands and others above-mentioned acquired by us from the said B. viz.* (here the whole Lands to which the Creditor had Right, and were Agreed; should remain with him, by vertue of his Rights foresaids, were Narrated) *whereunto we have Right by the several Dispositions granted to us by the said B. with Consent of the Persons therein-named: And that it is Conditioned, we should Discharge Action both*
Per-

Personal and Real competent to us, against the said B. or any others who are Bound, or may be lyable for the Debts above-mentioned, and against their Estate both Heritable and Moveable, by vertue of the Gifts of Ward, Non-Entry, Relief and Marriage, and Adjudications above-mentioned; and to make no other use thereof: But in so far as the same may operate for our further Security of the Lands and others above-rehearsed, Disposed to us and our said Son by ——— in manner above-exprest. Therefore, wit ye us as having Right in manner above-written, to have Exoner'd, quite Claim'd, and simply Discharged. Likeas, we &c. the said B. and all the Representatives, of his said Deceast Father, and his, and their Heirs and Executors, and all Persons that are Bound for them in the Debts above-specified, of all Personal Execution competent, or that may be competent to us, or to our said Son against them, or any of them, upon the Rights above-narrated; And also, of all real Execution competent, or that may be competent to us, or to our said Son, against the said B. his other Lands and Estate presently pertaining, or which shall happen to pertain to him, except allenaryly against the Lands and others above-mentioned, with the Pertinents Disposed to us by the said ——— For further Security whereof, it shall be lawful to us, and our said Son, and our Heirs and Successors, notwithstanding of this present

present Discharge, to Appryse or Adjudge the same upon the Debts above-written ; whereupon there is no Adjudication as yet, and to use what further Execution shall be necessar in order there-to, or to bruike and possess the same Lands and others foresaid, Disponed to us, by vertue of the Adjudication above-specified, and Rights above-mentioned granted to us of the same, notwithstanding of this present Discharge, which we shall only be Obliged to Warrant under the conditions and quality above-mentioned, from our own and our said Sons proper Facts and Deeds alienarly. It is always hereby Declared, that this present Discharge shall no ways hinder nor pre-judge the said B. as to any relief competent to him, from the Persons above-named or any of them, or their Representatives, who stood bound for the Debts above-exprest.

When Lands are Wadset, or Disponed under Reversion, the Parties afterward agree, that this Right be converted into an irredeemable one, which is done by the Creditors, Purchasing from the Wadsetter a Discharge, of the Reversion : The Stile whereof is as follows. *Be it known, &c. Me A. Forasmuch as, I by my Disposition of the date ——— Sold Annalzied and Disponed to B. Heretably under Reversion, all and sundry, the Lands and Barony of ——— and bound and obliged me, my Heirs and Successors, to Duely and Lawfully Injest and Sease the said B. and his foresaids, in all and whole ——— And*
D d made

made Constitute and Ordained C. Procurator for resigning thereof, in the Superiors hands in his favours. Reserving always to me, &c. (here take in the Reservations and Clause of Reversion) And with the other Provisions, and Conditions mentioned, and set down in the said Disposition, as the same at more length bears: And now for certain Causes and Considerations, Wit ye me to have Exonerated, Discharged and Over-given: Likeas, &c. To and in favours of the said B. The Reversion, Provision, and Condition of Reversion above-written, contain'd in the said Disposition and Right, made and granted by me to the said B. of the Lands and others above-specified and Tythes thereof: And in the Procuratory of Resignation and Infeftments following thereupon; and of all Right of Redemption competent, or that any ways may be competent to me, for the Redemption of the said Lands and others foresaid with the Pertinents, or any part thereof, and Tythes of the same, from the said B. and his foresaids, by whatsoever manner of way in time coming: And I do hereby will and consent, that the Lands and others above-written and Tythes thereof, abide and remain with the said ——— and his foresaid, Heretably and Irredeemably without any manner of Reversion, Redemption, or Regress whatsoever, Sicklike, and in the same manner, as if the foresaid Provision and Condition of Reversion, had not been contained in the said Disposition

position, Procuratory of Resignation, and Infeftments following thereupon, Reserving always to me the said A. and my ~~fore~~saids, the other Provisions and Conditions contained in the said Disposition and Right, which shall remain unhurt thereby. So that it is Declared, that there is nothing hereby Renounced and Discharged, but only the Reversion, and Right of Redemption: Which Right, Renunciation and Discharge of the said Reversion and Right of Redemption; I bind and oblige me, my Heirs and Successors, to Warrant to the said B. and his foresaids, to be Free, Safe and Sure, from all Facts and Deeds done, or to be done by me or by my foresaids, that may be hurtful or prejudicial hereto in any sort. Registration.

There's a Reversion competent to the Debitor and his Heir, to Lands Apprysed or Adjudged, and that for Five, or Ten Years after leading these real Diligences; after which time all Right of Reversion is expired: However it is proper that the Appryser purchase the good Will of the Debitor or of his Heir, which is done by granting a Renunciation of all Right he has or may pretend to the Estate Comprysed; which Renunciation and good Will in favours of a Singular Successor, is in this Stile; *Be it known, &c. Me A. Brother-German and Apparent Heir to the deceast——with the special Advice and Consent of A. my Eldest lawful Son, and me the said A. for my self, and*

as both with one consent : Forasmuch as B. hath acquired Right to several Apprysings, of all and whole the Lands and Barony of — with the mesuages &c. And we considering that the said B. hath given out great and considerable Sums for the acquiring of these Apprysings, and other real Diligences that affected the said Estate, which are far above the real Value of the same ; As also, considering that the said B. is our near Kinsman, being by his Grand-Mother descended of the Family of A. and did after Purchasing of all the saids Debts and Diligences, still allow to the said — a freedom for his Person, and did not trouble him with Caption, And that it is more kindly and natural that the said B. and his foresaids bruiik and enjoy the said Estate of B. then a Stranger, it being absolutely impossible for us, or either of us, to Redeem the said Diligences, tho' they were under Reversion, the Debts whereupon they proceed, far exceeding the Value thereof, so that we can neither possess the same nor no part thereof of our selves, nor get any benefite by quitting our kindness to the Reversion thereof : Therefore wit ye us both with one consent to have given and granted, as we by these presents Renounce to, and in favours of the said B. and his Heirs and Assignneys, mentioned in the foresaid Securities, all Kindness and Title whatsoever, that we, or either of us, or our Heirs or Posterity, may have to the foresaid Estate of B. and
Back

Back-bond above-mentioned; and we are content that the same be possesst by him, and his Heirs, and their Tennents peaceably in all time coming, and we Renounce the same to him with our Blessing and Bennison, and good Will, for now and ever; And we bind and oblige us conjunctly and severally, our Heirs, Successors and Executors, never to trouble nor molest him nor his Tennents, nor Cottars, in the peaceable Possession and Enjoying thereof, for now and ever; nor any ways quarrel nor impugn the Rights and Diligences acquired, or to be acquired by him: And we declare that we look upon him, and desire that he be holden and esteemed in all time coming, as Here-table Proprietar of the saids Lands and Barony, and we wish that the same may be bruik-ed by him and his foresaids, as their own proper Heretage; at their pleasure, perpetually, in all time coming; And we Renounce and give over any Right or Pretension that we, or our foresaids have, or may have, or to the Premisses claim Right, or to the said Back-bond, perpetually in all time coming. In this Case, a Resignation ad perpetuam remanentiam was thought proper, because it seems the Appryser had purchas'd Right to the Superiority of the Land or Annualrent.

A Discharge of an Obligement of War-
randice in a Contract, whereby the
Party now Discharged, was bound
to relieve the Party Discharging, of
all Publick Burdens due to the Mi-
nister, out of certain Lands Dispon'd,
and that for Years preceeding, and
in time coming.

BE it known, &c. Me A. Heir by Progress
to the deceast A. my Grand-Father, to
whom and in whose favours the Procurato-
ry of Resignation after-mentioned, is made and
granted: Forasmuch as, the deceast B. by a
Procuratory of Resignation, Subscribed with his
hand, of the date the ——— day of ——— bound
and obliged him, his Heirs and Successors to
have made due and lawful Resignation of all and
whole the Town and Lands of ——— with the
Mannour-place, &c. Together with the Teind-
sheaves thereof, and with the Right and Privi-
ledge of free Barony, free Regality, Chappel and
Chancellery, within the whole Bounds of the said
Lands, or any part thereof, with the Right
and Immunity of Exemption of the said ———
his Heirs and Assignes under-written, from all
Taxations, States-Stents, Contributions, and o-
ther Burdens and Impositions whatsoever, and
from all Jurisdiction, Ordinar and Extraordi-
nar,

nar, and from all Compearance before any Judge or Judges whatsoever, within this Realm, submitting them to his Majesty, and Lords of his Majesty's Secret Council, and Session altogether; and with the Exemption of the Tennents and Possessors of the saids Lands, from all Compearance before whatsoever Judge or Judges, Criminal or Civil, Spiritual or Temporal, except before the Lords of his Majesty's Secret Council, and Session; Discharging likewise all other Judges from all Calling or Pursuing of the said deceast A. and his foresaids, and of their Offices in that part for ever, and with the Right and Priviledge to Buy and Sell within all parts of this Realm, without payment of several Customs, conform to the Tenir of the Infestment, granted to the said B. and his Predecessors thereupon. In the hands of our Sovereign Lord. In favours, and for new Infestment of the same, to be made, given and granted, to the said A. his Heirs and Assignes whatsoever. Heretably to be holden of our said Sovereign Lord, for the Yearly Payment of the Duties respective under-written, viz. for the Lands respective above-specified, with the Salmond-Fishing, Woods, Priviledges and Pertinents thereof, the Sum of 26 sh. 8. d. Scots Money, at Whitsunday and Martinmas, by equal portions, in name of Feu-Farm, and for that relieving of the said B. his Heirs and Successors, of that part of the Feu-duty of 500 Merks Money foresaid, then addebted by him to his Majesty, for the Lands, Lordship, and

Ba.

Barony of ——— whereof the Barony of ———
 is part and pertinent by Annexation, conform
 to the Infeſtments granted to the ſaid B, and his
 Predeceſſors thereupon, without doubling of the
 Feu-mail, at the Entry of the Heirs or Succeſ-
 ſors of the ſaid A. and alſo the ſaid A. and his
 foreſaids, paying Yearly for all and ſundrry the
 Teind-sheaves, of the Lands above-ſpecified,
 with their Pertinents; To the Miniſters to be
 lawfully Provided, Admitted, and actually
 ſerving the Cure at the Kirk of M. for the time
 the Sum of 4 Merks Money above-written, at
 the Term of Martinmaſs allenarly, and that for
 all other Duty, Exaſtion, Service or Burden,
 that may be aſked by whatſoever other Perſon or
 Perſons, furth of the Lands, Teind-sheaves, and
 others above-written, in all time thereafter;
 and the ſaid B. granted an Procuratory of Re-
 ſignation to the effect above-mentioned: And
 which Reſignation and Infeſtment to follow
 thereupon, and all and ſundry the Lands,
 Fiſhing, Teind-sheaves, and others above-ſpeci-
 fied, with their Privileges and Pertinents above-
 mentioned, the ſaid B. bound and obliged him,
 his Heirs and Succeſſors whatſoever, to War-
 rant, Acquite and Defend, to the ſaid A. and
 his foreſaids, from all Facts and Deeds done
 by the ſaid B. and Umquhile ——— his Good-
 fires Brother, and to have been done by the ſaid
 B. granter of the ſaid Procuratory, his Heirs
 and Succeſſors, in any time then bygone, and to
 come: And alſo, he bound and obliged him,
 and

and his foresaid, to warrant that the Infeſtment above-written, was made and granted, without any diminution of the Rental of the Lands and others above-ſpecified ; and from all Action that might be purſued by his Highneſs or his Succeſſors, or by any other Perſon or Perſons whatſoever, for the Eviſtion of the ſaid Lands, and others foresaid, or any part thereof, throw the diminution of the Rental of the ſame ; And likewiſe, the ſaid B. bound and obliged him, and his foresaid, to Warrant and Relieve the ſaid D. and his foresaid, at the hands of the Miniſter of the ſaid Kirk of M. then preſent, and to come, and others having the Right and Power ; and from all other Duty and Exaction whatſoever, that they may claim for the Tytheſhaves above-ſpecified, except allenarly the ſaid Yearly Duty of 4 Merks Money above-written, at the Term above-expreſt : With this Proviſion, that the Limitation and Reſtriction of the ſaid Warrantice, in manner above ſpecified, ſhould no ways be hurtful or prejudicial to the Clauſes of Warrantice, contain'd in the old Infeſtments, granted to the Authors and Predeceſſors of the ſaid A. of the Lands and others aboveſpecified, by the Lords of St. John, and Preceptors of Torphichan, as the foresaid Procuratory of Reſignation more fully proports. Likeas, upon the 13 Day of March 1617 Tears, there was a Decreet of Suſpenſion pronounced by the Lords of Council and Seſſion, at the inſtance of the ſaid D. and &c. whereby

the said Lords Decerned and Ordained the said C. for himself, and taking burden upon him for J. C. his eldest Son and Apperand Heir, and as Father, Tutor and Administrator to him, and the said C. for himself, their Heirs, Executors and Successors, to pay and deliver Yearly, and each Year in all time thereafter to the said ——— and ——— their Heirs, Executors or Assignes, the Sum of 50 lib. Money of this Realm, upon the first Day of April Yearly in all time thereafter, the first Terms payment thereof to begin upon the first Day of April 1617, and that in full Contentation, compleat Payment, and Satisfaction of the Warrandice, contain'd in the said Procuratory of Resignation, granted by the said C. to the fore-named Persons, concerning their Relief of the said Ministers Stipend at M. then present, and to come ; With this special Provision and Condition, that if the said C. his Son, and their foresaids, contented and paid Yearly, and each Year, in all time thereafter, to the said ——— and ——— and their foresaids, the Sum of 50 Merks Scots, or to any other having Power to receive the same, within the Towns of Edinburgh or Leith, (which with consent of the saids Parties were places design'd for that effect) in the Month of ——— before the rising of the Session in the said Month, and that upon the Requisition of Eight Days, which was to have been lawfully made by the said ———

and

——— and their foresaid, to the said C. his
 said Son, and their foresaid: In that Case the
 said C. his said Son, and foresaid, to be free
 of the said Sum of 50 lib. and no otherways:
 The first Years Payment of the said Sum of 50
 Merks, to begin in the Month of ——— 1617,
 which was for the Cropt 1616, for which Sum
 of 50 Merks for the said Cropt 1616, the saids
 Lords Decerned the said C. his said Son and their
 foresaids, to pay the same to W. D. Advocat,
 in name of the saids ——— and ——— And
 sicklike Yearly thereafter, during the said W.
 D. his abiding in Edinburgh, and so long as
 he should have Commission to Receive the same,
 and after him to any others having their Power:
 And therefore the saids Lords of Council and
 Session of consent of the said ——— for himself,
 and taking burden upon him for the other Per-
 sons above written, and of the said W. D. Sus-
 pended simpliciter the Letters of Horning, rais-
 ed by them against the said C. so far as concern-
 ed the said Sum of 100 Merks, as that part of
 the said Sum of 300 Merks Modified Yearly for
 the said Minister at the Kirk of M. his Stipend;
 and that for all time then bygone, & in time com-
 ing: And decerned the same, whole Effect, and
 Execution thereof to cease in time thereafter.
 And which Decreet was Transferred by the
 Lords of Council and Session at the Instance of
 &c. Son and Heir Served and Retoured to the
 said Umquhile ——— the said ——— and
 ——— Active against the then Lord T ——— as
 E e 2 Son

Son and Heir to the said C. his Father passive upon the 20 July 1624. As the said Decreet of Transferring more fully declares: Likeas, I the said A. of &c. by my Discharge of the date the 27 Day of February 1669, did Exoner, Quite Claim and simply Discharge W—— now Lord T—— his Heirs and Successors, of my just and equal third part of the said Sum of 50 Merks, contained in the said Decreet, recovered against his Grand-Father, and that for all Years and Terms preceeding Whitsunday, in the Year 1669, and of the said Decreet it self, with all that had followed, or might follow upon the same, in so far as might or could be extended to my third part of the said 50 Merks for the Years above-specified, thereby Discharged as in the foresaid Discharge at more length is expressed: And in like manner upon the 10th Day of March 1686: I as Heir Served and Retoured to the Deceast A. my Father who was Heir Served and Retoured to the said Umquhile A. his Father and my Grand-Father, obtained a Decreet before the Lords of Council and Session against B. now of—— as Heir Served and Retoured to the said Deceast B. his Grand-Father, whereby the said Lords of Council and Session Found and Declared, that in respect of the special Clause of Warrandice above-mentioned, that the said B. was lyable to make Payment to me of one Boll Three Firlots and one Lippie of Beer, and of 3 Bolls 2 Firlots and 3 Lippies

Lippies of Meal, and of the Sum of 45 lib. 10 sh. 6 d. of Silver Stipend, with deduction of the said 4 Merks, and that from the Year 1664, to the Year 1680 inclusive, and thereafter. And the said Lords Found and Declared, that my proportion of the Ministers Stipend of M. is an Boll 3 Firlots, an Lippie, and 3 4th parts of an Lippie of Beer, and three Bolls 2 Firlots 3 Lippies and an half Lippie, and 2 ninth parts of an 4th part of an Lippie of Meal, and of the Sum of 48 lib. 3 sh. 10 d. and an half Penny, and an ninth part of 6 Farthings, with the ninth part of an Penny which the said Lords Found and Declared, I had constantly payed to the Minister of M. And in like manner, the said Lords modified the Sum of 4 lib. 3 sh. 4 d. for each Boll of Bear and Meal over head, for all Years then bygone and in time coming. And Decerned and Ordained the said B. Heir Served and Retoured to ——— his Father and and Oye, and Heir by Progress Served and Retoured to the said Deceast ——— to make Payment to me of the Sum of 21 lib. 1 sh. 8 d. as the price of the 1 Boll 3 Firlots and 1 Lippie of Beer and of 3 Bolls 2 Firlots 3 Lippies of Meal at 4 lib. 3 sh. 4 d. the Boll: being 5 Bolls 1 Firlot and 1 Peck, and that Yearly, for the Year of God 1664, and whole subsequent Years, till the Year 1680; extending the Prices of the said Viſtual, to the Sum of 376 lib. 5 sh. 4 d. Scots Money: And also to make Payment to me of the Sum of 45 lib. 10 sh. 6 d. of Sil-

ver

ver Stipend payable, and payed by me to the
 said Minister of M. by and attour the 4 Merks,
 and that particularly the said Years 1664 and
 subsequent Years, till the foresaid Year 1680
 inclusive, extending the said Silver Stipend
 during that space, to the Sum of 773 lib. 18 sh.
 6 d. and also extending the said prices of the
 Victual and Silver-Stipend-Duty the space fore-
 said, to the Sum of 1150 lib. 3 sh. 10 d. And
 also the saids Lords Decerned and Ordained
 the said B. to Warrant, Relieve and Skaithless
 keep me at the hand of the said Minister of M.
 present and to come, of the said Stipend, Victual
 and Money payable by me to them, except the
 said 4 Merks Yearly, or otherways to make pay-
 ment to me of the Sum of 22 lib. 2 sh. 8 d. as
 the price of the said 1 Boll 3 Firlots and 1 Lip-
 pie of Beer, and of 3 Bolls 2 Firlots and 3 Lip-
 pies of Meal, being 5 Bolls 1 Firlor and 1 Peck
 of Victual at 4 lib. 3 sh. 4 d. the Boll: And
 likewise, to make payment of the Sum of 45 lib.
 10 sh. 6 d. of Stipend ty and attour the said
 4 Merks, and that Yearly, since the said Year
 1680, and in time coming, ay and while I be
 relieved of the same, as the said Decreet more
 fully proports: And now seeing that the said
 B. hath made payment to me of the Sum of —
 for granting of the Discharge aftermentioned,
 wherewith I hold me well contented and satisfied:
 Therefore wit ye me to have Exonered, &c.
 the said B. his Heirs and Executors and all
 others

others the Representatives of his said Deceast Grand-Father, of that part of the Clause of Warrantice above-mentioned, whereby the said B. was obliged to Relieve the said A. my Grand-Father and his Heirs, at the hands of the Minister of M. then present and to come, and others having the Right and Power, from all other Duty and Exaction whatsoever, that they might claim from the Teind-Sheaves above-specified. Except allenary the said Duty of 4 Merks, and that not only for all EviCTIONS that are bypast, but for all that may hereafter happen by supervenient Laws or otherwise, and of the Decreet above-mentioned, obtained at the instance of my said Grand-Father, in the Year 1617, and of the Decreet of Transferring thereof, likewise obtained by him in the foresaid Year 1624, and of the other Decreet above-written, obtained at my instance, against the said B. in the Year 1686. And of all Action and Execution competent, or that may be competent to me, my Heirs or Assignes, against the said B. his Heirs and Successors, upon the Clause of Warrantice above-mentioned; in relation to the Teind-Sheaves of the Lands and others Disposed by his Grand Father, to my Grand-Father, or by vertue of the Decreets above-specified, or any of them, for now and ever: Which Discharge above-written, I bind and oblige me, my Heirs and Successors, to Warrant to the said B. and his foresaid, and to all the Representatives of his said Grand-Father

ther a sufficient Exoneration concerning the Premises at all hands, and against all deadly. Likeas, I have delivered up to him an Extract of the said Decreet of Transferring in the Year 1624, with the Extract of the Decreet above-mentioned, obtained at my own Instance, to be Keaped or Cancelled by him at his pleasure, &c. Registration.

The Stile of a General and Mutual Discharge between two Parties.

AT Edinburgh the——Day of——
 Years, clear Compt and Reckoning being made, betwixt A. on the one part, and B. and ——his Spouse on the other part, concerning all Sums of Money, Debts, Compt, Reckoning and others whatsoever, which any of them may ask or crave from others, for themselves, or as Representing whatsoever Person or Persons by Contract, Bond, Minute of Contract, Decreet, Missive Letters, Compts or whatsoever other manner of way, Right or Title, for whatsoever cause or occasion bygone preceeding the Date hereof, It is found, that they are completely satisfied and payed every one of them of others, and that they have fulfilled to others all Bonds, Obligations, Contracts, Compts, and others granted by any of them to others, and which any of them may crave of others, by vertue of whatsoever Right, or for whatsoever cause

cause or occasion bygone, preceeding the Day and Date hereof. And therefore, the said A. by these presents, Exoners, quite Claims, and simply Discharges the said B. and his said Spouse, their Heirs, Executors, and all others whom it effeirs, of all Sums of Money, Debts, Compts, Reckonings, Obligements, and others whatsoever, which he for himself, or as having Right, from or Representing whatsoever Person or Persons can ask or crave of the said B. and his said Spouse, or their above-specified, by Bond, Contract, or whatsoever manner of way, Right or Title, for whatsoever cause or occasion bygone, preceeding the Date hereof; And of all Writs made thereupon, and of all Action, Instance and Execution competent, or that may be competent to them, by vertue of the same, with all that has followed, or may follow thereupon, for now and ever. Likeas, the said B. for himself, and taking Burden upon him for the said ——— his Spouse, and she for her self, with his consent; And they both with one consent, by these presents Exoners (verbatim, as on A's part) As also, both the saids Parties Declare, that this their general Discharge shall be as sufficient each of them to others, as if the same were special and particular, whereanent they for them and their above-mentioned, hereby dispence, renouncing all exceptions of the Law that can be proponed or alledged in the contrary. And in like manner, the said A. Binds and Obliges him, his Heirs,

Succeffors and Executors, to warrant this Discharge above-written, to be Valid Good, and sufficient to the said B. his said Spouse, and their above-specified at all hands, and against all deadly as Law will: And sicklike, the said B. for himself, and taking burden upon him for the said ——— his Spouse, and she for her self with his consent; And they both with one consent, Bind and Oblige them Conjunctly and severally, their Heirs, Succeffors and Executors, to Warrant their Discharge above-rehearsed, to be Good, Valid and sufficient to the said A. and his foresaid, at all hands, and against all deadly. It is always hereby provided and declared, That all Discharges formerly Subscribed and Delivered by any of the before-named Persons, to others shall no ways be hurt nor prejudged by this present Discharge, but shall stand Valid and Effectual, notwithstanding thereof, Registration for preservation, and Letters if need bees.

After the close of a Plea, which ended in a Transaction, a mutual general Discharge was in a more brief Form, Thus.

A T ——— &c. Day of ——— &c. Years,
*It is agreed betwixt A. on the one part,
 and B. on the other part, That they shall
 grant mutual Discharges to each other in man-
 ner*

ner following, To wit, the said A. for himself, and as having Right from ——— or any of them, by these presents Exoners, quite Claims, and simply Discharges the said B. his Heirs, and Executors, of all Debts and Sums of Money, Compts, Reckonings, and every other thing whatsoever, that he can Ask, Claim, or Crave, from the said B. or can lay to his Charge, for whatsoever cause or occasion bygone, preceeding the date hereof, dispensing with the generality, and admitting the same to be as valid and sufficient, as if every particular were herein specially mentioned and expressed; declaring nevertheless, that this Discharge shall not prejudge the Disposition and Assignment, of this date, granted by the said A. to the said B. And on the other part, the said B. Exoners, quite Claims, &c. verbatim as on A's part. And both Parties bind and oblige themselves hinc inde to others, to warrant this present Discharge to one another, to be good and sufficient Exonerations concerning the Premisses, at all hands, and against all deadly. Registration as above.

When a Cautioneer or Co-principal pays the Debt, the Creditor gives him not only a Discharge of the Bond, in so far as he stands bound, but also an Assignment to the full Debt, and Bond against the Principal, or to the Bond, in so far as the other Co-principal is bound to relieve him. Which Discharge and Assignment is in this Form.

Be it known, &c. Forasmuch as &c (here narrate the Bond with the Clause of Relief subjoined to the Bond, or the Bond of Relief apart, all in common Form) And seeing the said D. hath made payment to me, &c. Therefore wit ye me, not only to have Exonered, &c. the said D. Cautioner above-named, of the Bond above-mentioned, and whole Sum of Money, Principal, Annualrent, and Liquidate Expences above-specified, contained therein, and of all that has followed or may follow thereupon; But also, to have made and Constitute, &c. here follows the Stile of an ordinary Assignment, surrogating and substituting the said D. in my full Right and place of the Premisses, and that in so far allenerly as the said Bond and Diligence to be done thereupon, may be extended against the said B. principal Debitor, but no ways against the said Cautioner (or either of them) who is Discharged in manner above-written, with power, &c. Which Discharge and Assignment, I bind &c. to warrant in manner following, viz. The foresaid Discharge at all hands, and against all deadly, and the said Assignment, from all Facts and Deeds done and to be done prejudicial hereto, allenerly, to wit, That I have not made nor granted, &c. any Assignment, or other Right, or Discharge, except the Discharge above-written, that may be hurtful, &c. (as in an ordinary Assignment)

The

The restrictive Clause, *and that in so far alienably, &c.* is by some Writers, placed immediatly before the Clause, *surrogating and substituting, &c.*

In place of the Exception of the Discharge out of the Warrantice of the Assignment, some put, after the ordinary and simple Clause of Warrantice, a Declaration, thus, *Declaring nevertheless, that my granting both a Discharge and Assignment, shall in noways infer double Warrantice against me.*

If the payer be a Co-principal, and there be no written Instruction of Relief, in whole or part of the Debt, the Assignment is thus—*Cessioners and Assignees, in and to so much of the said principal Sum of — and Annualrents thereof above-mentioned, both bygone and in time coming, as the said C. stands obliged to relieve him of, by the Bond above-mentioned, and to a proportional part of Liquidate Expences thereof above-specified effecting thereto, and in and to the foresaid Bond, &c. in so far only as the same may be extended against the said C. for the Sums hereby Assigned, and no further. Surrogating, &c.*

Of Assignations Compound.

AN Assignment being a Writ of Conveyance, appointing and setting over a Right of a Moveable Subject, We have

have formerly treated of simple Assignations, it remains now that we account for Compound ones.

If personal Diligence, as Horning and Caption, be rais'd on the Bond, or real Diligence, as Arrestment and Furth-coming, be us'd by the Creditor, these respective Diligences must be narrated ; and it is, this chiefly, which gives to this Conveyance the denomination of a Compound Writ.

Assignations are to be considered in three several Forms, from which the variety proceeds ; and that is with respect to the Granter. 2dly. To the Receiver. And Lastly, With respect to the Subject-Matter convey'd. If the Assignation is to be granted by the Creditor himself, it is thus, —
Be it known to all Men by these presents, Me A. Forasmuch as (here narrate the Registered Bond, Horning, Caption, Arrestment, Process or Decreet of Furthcoming, or the like Moveable Diligence in common Form and thereafter subsume) And now seeing B. hath made payment to me of a certain Sum of Money, &c. Therefore, wit yeme, to have made and Constitute, as I by these presents make and constitute the said B. his Heirs and Donators, my very lawful and irrevokable Cessioners and Assigneys, in and to &c. as in the Stile of a simple Assignation, And as to the Diligence you say, And in and to the fore-

foresaid Bond it self, Decreet of Registration interponed thereto, Letters of Horning raised thereupon, and Executions thereof, with the Letters of Caption following upon the same. (And so forth as to any other Diligence) Surrogating, &c. With Power, &c. And if need be to cause put the foresaid Letters of Horning and Caption to further Execution, &c. And to use all manner of Legal Diligence, &c. Or thus, And to prosecute the foresaid Arrestment, and Process of furthcoming raised thereon. The Warrantice is the same as in a simple Assignation. Likeas, I have instantly delivered, &c. here set down briefly the Bond, and Inventar of the Diligence following thereon; or which is shorter, say, Likeas, I have instantly delivered to the said B. the whole Writs above-narrated, to be keep'd &c.

When the Assignation is granted by the Heir or Executor of the original Creditor, there's no difference in the body of the Assignation, from what is above set down, save only the Granter has the Additional Designation of *Heir or Executor*, as is observed in the Stile of Discharges.

If the Assignation be made by a Factor, he must have a special Power and express Warrant by his Factory, to make conveyance of his Constituents Effects; for regularly such Power is not imply'd in Commissions and Mandats. The form of which is, thus,

thus. *Be it known, &c. Me A. as Factor for B. specially constitute with Power, to grant Assignations and other Conveyances, in manner under-written; Forasmuch as, (here narrate the Bond and such Diligence as was done by the Constituent, and after which, mention the Factory, and specially that power and faculty to Assign, and next the Diligence done by the Factor, and then subsume) And now seeing that C. hath made payment to me as Factor, for and in name and behalf of the said B. of the Sum of———Therefore, wit ye me, as Factor foresaid, and by vertue of the Power and Faculty given to me hereant, in manner above-narrated, to have made and constitute, &c.*

Tho' Assignations by Tutors, in name of their Pupil be not sufficient and valid Rights *ante redditas rationes*, yet these may and are in use to be granted: The Stile whereof in what concerns the way of naming the Granter of the Write, is much of the Tenor with that in Discharges made by a Tutor, in name and behalf of his Pupil, which have been treated of already.

The same may be said of Assignations by Minors, with consent of their Curators, tho' in effect these are not so easily reduced, nor is the Minor without good ground reposed against them.

When

When the Assignation is granted by a Wife with consent of her Husband, the Granters are express'd as is done in the Discharges granted by them: However to illustrate this part of Compound Assignations, take the following Example of an Assignation to a Bond of Provision, by a Wife with consent of her Husband. *Be it known, me A. youngest lawful Daughter to the deceast B. with advice and consent of C. my Husband for his Interest, and me the said C. for my self, and for all Right that I have or can pretend to the Sums of Money aftermentioned, by Assignation, Disposition, Jure Mariti, or otherways, with consent of, and taking burden upon me for my said Spouse, and we both with one consent and assent, Forasmuch as, the said deceast B. by his Bond of Provision, of the date——bound and obliged him, his Heirs, Successors and Executors to have made payment to me the said A. of the Sum of 30000 Merks Scots Money at my Age of 16 Years: And in case it should happen, any Heirs Male, of Tailzie or Provision, not descended of the said B. his own Body, to succeed to him, or to D. his Son, in the Lands and Barony of R. not being descended of his own Body, as said is; To pay to me the said A. the Sum of 10000 Merks more at the time after-specified, which Sums respective above-mentioned, are appointed to be in full contentation and satisfaction to me of all Bairns part of Gear, natural Portion, Goods,*

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Gear,

Gear, Debts, and all other benefit, that might pertain and besal to me, or that I might Ask or Crave, by or through the Decease of the said B. my Father, and ——— his Spouse, or either of them, and of all former Provisions made by him to me, as the foresaid Bond of Provision more fully contains. And seeing, that the said D. my Brother Died without Heirs Male of his own Body, and that my Brother E. who is, and has been Dumb and Deaff since his Birth, is now come to a considerable Age and Un-Married; So that the Estate will fall, Pertain and Descend to the Heirs Male of my Brother D. according to the Bond of Tailzie made by my Father thereof, and I will come thereby to have Right to the said Sum of 10000 Merks. As also seeing, that F. hath made payment to me, &c. Therefore, wit ye us, both with one consent, and me the said C. taking burden upon me for my said Spouse, as said is, to have Made, Constituted and Ordained, and by these presents, Make, Constitute and Ordain the said F. his Heirs and Donators, our very Lawful and Irrevocable Cessioners and Assignees, in and to the foresaid Sum of 10000 Merks of additional Portion granted to me the said A. in the case above-specified, and to the Annualrents thereof, if any shall be found due since the Decease of the said D. and in time coming, during the not-payment of the same, and in and to the foresaid Bond of Provision, whole Clauses and Obligements

ments thereof, In so far as, the same is conceived, in favours of me the said A. for payment of the said Sum of 10000 Merks; and all other Writs granted, or which may be interpreted in my favours concerning the same: Surrogating, &c. and to grant Discharges, &c. And if need be, to Pursue the Heirs Male of the said Deceast B. and D. his Son thereanent, and to use all manner of legal Diligence for recovering payment thereof, with Warrantice from Fact and Deed, excepting always from the foresaid Warrantice any Discharge granted by me the said A. and my said Husband, 'or either of us to ——— of the first 30000 Merks above-mentioned, and of my part of the Executry of the said Deceast B. my Father, in so far as the same may infer double Warrantice against me; And because the foresaid Bond of Provision is Registred and already delivered to the said F. Therefore we do hereby declare, that he, or his foresaids, may use or dispose thereupon, as their own proper Evident; in so far as the same is conceived in favour of me the said A. at their pleASURE in time coming.

Assignations are granted to one for himself, and his own behoof, which is expressed as in the preceeding Examples: Or, they're given to one in name and behalf of another; in which case, in the Subsumption you say, And seeing B. as Tutor for, and in name and behalf of C. hath made payment, &c. Or thus, B. as Tutor (or Curator) for C. hath in name

and behalf of his Pupil (or Minor,) made payment, &c. (and the like as discretion will direct) Therefore, wit ye me, to have made and constituted &c. the said C. his Heirs and Donators, &c. So that the Right is given directly in the name of the Constituent or Pupil, and no mention made of the Tutor or Factor.

When the Right is in favour of one in Liferent, and another in Fee; as a Husband takes a Right of a Sum, and Bond, to himself and his Wife, and the longest Liver of them Two in Liferent, and to the Children, or to a Child *nominatim* in Fee; the Subsumption imports payment of Money by the Husband for himself, and in name of his Wife and Child, and the Assignment is made according to the Destination of the Party, as may be seen in a Bond of borrowed Money; in this case, the Subsumption which begins with these words, *And now seeing*, is various, according to the Cause of granting the Right, which is either One-rous or Gratuitous. The manner of expressing these Causes may be known from what is said already concerning simple Assignations, and from the Subsumptions there.

The Stile of Assignations vary much, according to the diversity of the Matter conveyed, and circumstances thereof; each Subject having a peculiar way in the enumerating

merating and describing thereof. The order in Assignations is the same with that in Discharges; first, To mention the liquid Sum, or thing Assign'd; and next, the Right or Deed, by which it is due; as may be discerned from the Examples, before and hereafter set down, tho' in sundry Instances, I have observed this order transgressed.

The Subject-Matter is either General, as all Goods and Gear; and the Right thereof is called a General Assignation and Disposition: Or it is Special, as a Liquid Sum and Debt; for security whereof the Cedent has Right either to Moveables or Immovables, and this Right is either Voluntar or Legal, or without respect to any foregoing Debt, the Assignation, is of Goods moveable directly, as an Assignation to Corns, Cattle, Household-plenishing, and the like; which Right is ordinarily term'd a Disposition, tho' the one Name and the other are promiscuously used.

The proper Characteristick of an Assignation, is the having the words, *Make, Constitute and Ordain. B. my very lawful Cessioners and Assignneys*; that of a Disposition hath the words *Sell and Annalzy, or Sell and Dispose*. But this is not universal, for I have notic'd them used promiscuously; and both these modes of Expression are in Translations, which differ not, from an Assignati-
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on, but in this, that the Assigney conveys.

When the Cedent, is in the Bond, design'd otherways than by the Title or Designation, that he now makes use of, to make a connection, both his old and new Designation must be mentioned, thus, *A. of B. designed in the Bond under-written A. of C. or the like.*

Before a Person Forfaulted can acquire any Right, he must have a Remission; and in the Right and Conveyance it may be made mention of, thus, *And now seeing that B. hath obtain'd Remission and Rehabilitation from his Sacred Majesty, and hath made payment of a certain Sum of Money, &c.*

We first treat of special Assignations, or of Rights to a particular Subject; the Stile of an Assignation to a Debt or Sum of Money, due by a Movable Bond, which is a voluntar Right, may be known from what is above set down, only it is to be notic'd, That if two or moe distinct Bonds are to be Assigned, the Stile of the Assignation in the first place mentions the Sums in the first Bond, and next, the Sums in the second Bond, and so forth with the rest; and thereafter is subjoin'd, *In and to the foresaids two (three or moe) Bonds themselves, with all that has followed or may follow thereupon.*

An Assignment of a Debt, secur'd
by a Legal Diligence, or Liquid by
a Personal Decreet, is thus,

BE it known, &c. Me A. Forasmuch as
upon——I obtained Decreet before ——
against B. decerning and ordaining him
to make payment to me of the Sum of &c. which
was resting by him to the deceast——and
now to me as Executor Dative, decerned and
confirmed to him, and that for diverse Reasons
and Causes, specified in the said Decreet, as
the same, and Letters of Horning raised there-
upon at more length proports: And seeing that
I am resting to——the Sum of &c. with cer-
tain Annualrents and Expences, conform to a
Bond granted by me as Principal, and —— as
Cautioner for me to him thereupon; and that I
am most willing that the said &c. should be paid
of the said Principal Sum and Annualrents there-
of resting unpaid, and thereby the said &c. re-
lieved of his said Cautionry: Therefore, wit-
te me, to have made, constituted and ordained,
And by these presents make, &c. the said, &c.
his Heirs and Donators, under the Reservation
and Declaration always after-mentioned, my
very lawful Assignees, in and to the foresaid De-
cree, Sums above-specified therein-contained,
Letters of Horning and others raised, or to be
raised thereupon, Executions, Indorsations and
Re-

Registrations thereof, with all that has followed or may follow upon the same; and to all Action, Instance or Execution competent, or that may be competent by vertue thereof, Surrogating and Substituting by these presents, the said &c. under the Reservations and Declarations always after-mentioned, in my full Right, Title, and place of the Premisses for ever: With full power to the said, &c. and his above-mentioned, to ask, &c. and to call and pursue therefore, either in my name or in their own, as they shall think expedient; by putting of the said Decreet and Letters raised thereupon to Execution, as accords of the Law, and to give Acquittances and Discharges thereof, Transact, &c. and generally, &c. which Assignment, &c. to warrant &c. Likeas, I have instantly herewith delivered, &c. With this provision and declaration always, That how soon the said &c. or his foresaids shall obtain payment of the Sums above-mentioned, hereby assigned, that immediately thereafter they shall be holden to make payment to the said &c. or his above-mentioned, and purchase, procure, repeat and deliver to me, and my foresaid, the Bond granted to the said &c. with a sufficient Discharge thereof, to be kept and used by me and my foresaid at our pleasure, in all time coming, Registration, &c.

A Bond by the Assigney to the Cedent, mentioning the end for which the Assignment is granted, and obliging himself according to the Tenor of the above-written

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Provision and Declaration, is more for the Cedent's Security and Interest, than a Declaration in the Assignment, which is not in the keeping, or at the command, of the Cedent.

Assignations of Decrees for Payment of Money, are in the same order and Stile, with these of Bonds for borrowed Money, to wit, the Sums are always first mentioned and Assign'd, and then the Decrees.

In the Assignment of an Heretable Bond, which contains a Clause of Infeftment, two Cases are to be considered; The first is, if the Cedent be not Infeft, in which Case, the Assignment is in the Form and Stile of an Assignment to a moveable Bond: With this difference, that the Bond is narrated, and the Proctory of Resignation and Precept of Seafin are expressly Assigned, and the Power is to Purchase and Procure himself (the Assignee) Infeft and Seafed in the foresaid Annualrent, by vertue of the Procuratory of Resignation, or Precept of Seafin contained in the foresaid Bond, and the present Assignment of the same; And in the power to grant Discharges, you must add, power to grant Renounciations also.

The next Case is, If the Cedent is Infeft, either npon the Precept of Seafin in the Bond, or upon a Charter of Resignation, then the Right is in the Stile of a Disposition for Lands, for which we refer

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you to that part, which treats of the Stile of Real Rights and Conveyances.

If real Diligence against Lands by Adjudication, or the like, has been deduc'd, for security of the Debt, in the conveyance, the two former Cases are to be considered; for if no Infestment has followed upon the Adjudication, the Assignation and Disposition is thus,

BE it known &c. *Me A.* Forasmuch as, (here narrate the Bond in common form, after which the narrative of a Decreet of Adjudication; there were also narrated an Arrestment, Decreet of Furthcoming, Horning, Suspension, and Decreet of Suspension:) And now seeing that *B.* hath made Payment to me of a certain Sum of Money, equivalent to the Sum hereby Assign'd, for granting the Assignation under-written: Where-with I hold me well contented and satisfied, and Exoner, quite Claim, and simply Discharge him, his Heirs and Executors of the same, Renouncing all Exceptions in the contrary for ever. Therefore, wit ye me, to have Sold, Annal-zied and Disposed; Likeas, &c. to the said *B.* his Heirs and Assignes whatsoever, all and whole the foresaid Lands of——— with Houses, &c. lying and bounded in manner above-mentioned, together with all Right, Title, Interest, Claim of Right, Property and Possession,

on, Petitor and Possessor, that I, my Heirs or Assignes, have, or any ways may have, Claim, or Pretend thereto, or to any part thereof in time coming. And farther, wit ye me, to have made and constituted; Likeas, &c. the said B. his Heirs and Donators, (secluding his Executors) my very lawful and irrevocable Cessioners and Assignes, in and to the foresaid Principal Sum of 2500 Merks, and 200 lib. of liquidate Expences, and to the Annualrent of the said principal Sum bygone, Resting unpay'd since the Term of ——— and in time coming; during the not Payment thereof, and in and to the foresaid Bond, Letters of Inhibition and Arrestment raised thereupon, Executions thereof, and to the foresaid Decreet of Adjudication; and likeways to the foresaid Decreet of Furthcoming, and Decreet of Multiply-Poiniding and Preference, Letters of Horning and other Letters, and Diligence done thereupon; Executions, Indorsations, and Registrations thereof; and all that has followed, or may follow thereupon: Surrogating, &c. with power to him and his foresaid, by vertue of the said Decreet of Adjudication, and this my Assignment thereof, to Purchase and Procure themselves to be duely and lawfully Infeft, and Seased in the Lands and ohters above Disponed; And also to Ask, Crave, &c. and to grant Discharges, &c. and if need be to call and pursue therefore either in my name or their own, as they shall think expedient, and to use all manner of Legal Dili-

gence for recovering payment thereof, Compose &c. And generally, &c. Which Disposition and Assignment, I bind & oblige me and my foresaid, to warrant, &c. Likeas, I have instantly herewith delivered to him the Extract of the foresaid Bond, with the Letters of Inhibition and Arrestment rais'd thereupon, with Extracts of the said Decrets of Adjudication, and for making furthcoming, and of Preference, all to be kepted and used by him, and his foresaid, as their own proper Evidents at their pleasure in time coming. Registration for preservation, and Letters of Horning if need be.

Besides the Clauses contained in this Assignment of a Decreet of Adjudication; I have seen an Assignment of the Mails and Duties of the Lands Adjudged, for all Years since the Decreet, and in time coming, I have observed, some are not in use to Dispose the Lands Adjudged, as in the Case foresaid, but only the Decreet; which I think, is not very regular, for a Decreet of Adjudication is a Legal Disposition of Lands, and other Subjects Adjudgeable; And the Adjudger, when not Infest, must convey his Right in the same Form and Stile, as one Transmits a Disposition of Lands, wherein he is not Infest; And the Power, was, with Power to him, and his above-written, by vertue of the foresaid Decreet of Adjudication, and this my Assignment thereto;

To

To Purchase and Procure the Precepts, furth of our Sovereign Lords Chancellary, and thereby to obtain themselves duely and lawfully Infeft, and Seised in the Lands, Teinds, and others above-mentioned, and to Uplift and Receive, and if need be, Pursue for, the foresaid bygone Mails and Duties,

But if the Disponer be Infeft in the Lands Adjudged, either the Legal Reversion competent to the Debitor is not expir'd, and then the Disposition has a Narrative of all the Diligence, and, after the Dispositive Clause, the ordinary real Clauses, as obligation to Infeft, Procuratory of Resignation, Precept of Seasin, &c. are Inserted in the common Form, as will be shown in the Title of Dispositions. Or the Legal Reversion is expir'd, and then the Disposition has no Narrative; and is like that made by an irredeemable Proprietar of Lands: of which in another Treatise.

Assignations and Dispositions of moveable Goods, directly, that is, without being a Security, or a Corroboration of a Liquid Debt, as are Rights to Corns, Cattel, Horse, Nolt, Sheep, &c. are exprest in this manner.

BE it known, &c. Me A. for an certain Sum of Money Payed, and Delivered to me by B. To have Sold and Assign'd, Likeas, I by these presents, Sell, Assign and Dispose, to, and
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in Favour of the said B. his Heirs, Executors or Assignees whatsoever, all and sundry my Insight-Plenishing, Goods and Gear pertaining to me, upon the ground of the Lands of ——— That is to say, 60 Sheep young and old, Ten Oxen, Ten Kine, Six Yield Nolt, Three Horses, the Sowing of Twenty Bolls of all sorts of Corns, such as Wheet, Beer, Oats and Peeze, upon the half of the same Lands of ——— laboured by me this instant, Cropt and Year 1715. Together with all Right, &c. Surrogating, &c. with full power to him and his foresaid, presently to enter to the peaceable possession of the said Horse, Nolt, Sheep, Cows, Sowing, and to use and dispose thereupon at their pleasure; and generally, &c. use and exerce concerning the Intromission with the foresaid Corns, Cattel, Goods, Gear, sick-like. And as freely, &c.

An Assignment to Household Plenishing, is thus,

BE it known, &c. Me A. For the Love, Favour and Affection, that I have and bear to B. and for his great Diligence and constant Pains in my Business, and for other Onerous and weighty Causes moving me, To have sold and disposed, &c. Likeas, &c. to the said B. his Heirs and Executors under the reservation after-specified, my whole Insight-Plenishing within my Dwelling-house in ——— conform to a
par-

particular Inventar thereof, of the date _____ which is holden as repeated and expressed herein, Reserving always to me my Liferent Right and Portion of the foresaid Plenishing, during all the days of my Lifetime, with power to the said B. and his foresaid, presently to take possession of the said Plenishing, and after my decease to intromet with, and away take the same, and dispose thereupon at their pleasure; And if it shall be necessary, to pursue for delivery to them thereof, before whatsoever Judges competent, as accords of the Law, and generally to do every other thing requisite for establishing the Right thereof in their person, sicklike and as freely, as I might have done my self, before the making this present Disposition and Assignment; Which Disposition and Assignment, I bind and oblige me, my Heirs and Executors, to warrant to the said B. from my own proper Fact and Deed allenarly; And for further security thereanent, I have instantly with my own Hands at the subscribing hereof, given possession to the said B. of the foresaid Plenishing, reserving only my own Lifetime thereof, as is before expressed.

From the variety occasioned by the Subject Matter assigned, it is observable, that the Clause which gives power to use and dispose upon, is various, according to the special nature of the thing; since every Subject or Matter of Commerce, hath it's proper use, and is not fit for all uses. So that the Styl-
list and Writer, in conveying this power
of

of Using, must express himself in habile and proper Terms.

Thus, in an Assignment and Disposition of an Adjudication, whereupon no Infestment has followed, beside the ordinary power to Ask, Crave, &c. there is a power by virtue of the said Decreet of Adjudication and Assignment thereof to the Assigney, to purchase himself Enfeft and Seased in the Lands adjudged. And in an Assignment to Mails and Duties, given for further Security, the power, beside the common, is, To uplift and discharge the same Mails, and to pursue the Tennents therefore, upon Decreet already recovered, or to be recovered by the Assigney, for payment thereof, to do all Diligence necessary.

Not only Things, but Rights, Writs, and special Clauses in them, and the Powers and Faculties competent thereby, are Assigned; and no direct mention is made of their Effect or Product: Tho' without this Fruit, which encreases our Patrimony and Estate, it is but a very barren conveyance. Such as an Assignment to Clauses in Tailzies or other Writs, whereby Sums in a certain event become due to the Cedent; of this kind, take the following Example.

Assig-

Assignment of a Tailzie, and Provisions therein, conceived in favours of the Cedent.

BE it known, &c. Me A. Son and Heir Served and Retoured to the deceast B. Forasmuch as, there was a Contract and Agreement made upon ——— betwixt the Deceast A. my Grand-Father, and the said B. then designed, &c. with consent of ——— And the said ——— for themselves, with consent of my said Father and Grand-Father on the other part; By vertue whereof, and for the Onerous Causes at length therein-exprest, The said C. with consent foresaid, Bound and Obligated him, his Heirs and Successors, to make due and lawful Resignation, of all and whole the Lands and Barony of ——— and others particularly under-written, viz. &c. All lying &c. In the hands of the King's Majesty, or his Highness Successory, and others the said C. his immediate lawful Superiours thereof, In favours and for new Infestment of the same, to be Made and Granted by the said Superiours, or their Successors to the said C. and his Heirs Male then lawfully to have been gotten of his own Body; which failzieing to the said B. my Father, his Heirs Male and Successors, in the Right of the Living of L. Heretably, in due and competent form. As also the said C. with

consent foresaid, did thereby Contract, Will and Ordain, that after him, all Tacks and Rights of Teinds, Parsonage and Viccarage, of the Lands, Barony and others above-written, with the Pertinents then pertaining to him, or that should be acquired by him at any time thereafter, with the Reversions of all Wadsets, Annualrents, and other Burdens being thereupon, or upon the foresaid Lands, Barony, and others above-written, or any part thereof; and all Right of Redemption of the same, should pertain and belong to the said Heirs Male lawfully to begotten of the said C. his own Body, which failzieing to the said B. my Father, his Heirs Male, and Successors to the said Living of L. as well as the Heretable Right of the said Lands, Barony and others above-written, according to the said Infestment of Tailzie and Provision above-specified to follow thereupon. And for that effect, the said C. with consent foresaid, was to Make, Constitute and Ordain his foresaid Heirs Male, and of Tailzie and Provision above-designed, to be contained in the foresaid Infestment, his undoubted and irrevocable Cessioners and Assigneys, In and to all and sundry Tacks, Assedations, Assignations, Translations, Dispositions, and other Writings and Securities whatsoever, Made and Granted to his said Umquile Father, or to any other his Predecessors, or obtained by him or them, or to have been obtained, and made to him thereafter

ter of, upon, or concerning the Teinds, Parsonage and Viccarage of the said Lands, Barony and others above-witten, with the Pertinents, and to all Reversions, Contracts, Bonds, Promises and Conditions of Reversions, Made and Granted to the said C. his said Umquhile Father, or others his Predecessors, Authors, Cedents or others, from whom he had Right for Redemption of the Lands, Barony, and others above-written, or any part thereof, or of any Wadset Annualrent, Apprysing, or other burden being thereupon, to the effect, that, after the said C. his decease, the Heirs Male then to have been gotten of his own Body, which failzieing, the said B. his Heirs Male and Successors foresaid, might succeed; and have Right to the Teinds, Parsonage and Viccarage of the Lands, Barony, and others above-specified in manner mentioned in the said Contract; whereby it is provided and declared, that it should not be Leisum to the said C. nor his Heirs Male foresaid, neither to break the said Tailzie, nor to ontake upon the said Lands, Barony and others above-written and Teinds thereof, no Sums of Money, except 5000 Merks. Likeas, the said C. with consent foresaid, Bound and Obliged him, and his foresaid, neither to alter nor break the said Tailzie, nor to on-take any greater Debt upon the said Living, than the Sum foresaid. And in case it should happen, the said C. and his Heirs Male then lawfully to have been begotten of his own Body, to Failzie,

or to do in the contrary, either by altering or breaking of the said Tailzie, or on-taking of any Sums of Money, more than the Sum foresaid, upon the foresaid Lands, Barony, and Living of, ——— Then, and in that case, the said C. and his Heirs Bound and Obliged him, and them to Content and Pay to the said B. his Heirs Male and Successors, the Sum of 10000 Merks Money foresaid, immediatly after the said C. or his Heirs shall Contraveen and do in the contrar thereof, and the said Failzie to be received by way of Exception or Reply, without any Declarator, till the Sum were payed. All altering or breaking of the said Tailzie, and farther burdening of the foresaid Living, more than the Sum above written, and all Securities to be made thereanent to be null, and of none avail force nor effect, as the said Contract more fully bears. And now seeing, that ——— hath made Payment to me of a certain Sum, for granting of the Right and Assignation underwritten, wherewith, &c. Therefore, wit ye me, as Son and Heir Male foresaid, Served and Retoured to the said Deceast B. my Father, to have made and Constituted. Likeas, &c. the said ——— his Heirs and Donators, my very lawful Cessioners and Assignees, in and to the foresaid Contract, and whole Clauses and Obligements contained therein, conceived, or that may be interpreted in my favours, And specially, without prejudice of the generality foresaid,

said, in and to the said Sum of 10000 Merks,
 and whole Annualrents and Profits thereof, if
 any shall be found due by Law, aswell of all Tears
 and Terms bygone resting unpaid, as in all time
 coming, during the not payment thereof, and in
 and to all Actions and Processees intended at my
 Instance in the said matter, and in and to the
 whole Acts and Interloquitors, Minuts of Pro-
 cess, and Dispute if any be made thereupon,
 and to the Letters of Inhibition raised at my In-
 stance in the said matter, Executions, Indor-
 sations and Registrations thereof; and to all
 Action and Execution competent, or that may
 be competent to me thereanent: Surrogating
 and Substituting the said ——— in my full
 Right and Place of the Premisses for ever, with
 Power to him or his foresaid, to prosecute and
 follow forth all Actions already Intented, and
 Depending at my Instance in the said matter,
 and to obtain Decreets therein, and to use all
 manner of legal Diligence, either at my Instance
 or his own, as he shall think expedient, for pro-
 curing the Implement of the foresaid Contract,
 Compone &c. Which Right and Assignation,
 &c. to Warrant to the said ——— and his
 foresaid, from all Facts and Deeds, done by my
 said Deceast Father, or to be done by my self, his
 or my Heirs or Executors, at any time bygone,
 or to come, prejudicial hereto allenarly; Except-
 ing and Reserving always furth and from his
 present Warrantice, any consent that was given
 by me to the Disposition of the said Lands of
 &c.

&c. (Being a small part of the Lands Tail-
 zied) with their Pertinents granted by ———
 in favours of ——— which consent shall noways
 infer nor import any Contravention of the pre-
 sent Warrantice, but is expresly excepted there-
 from. Likeas, I have instantly herewith de-
 livered to the said ——— one of the Subscrib-
 ed Doubles of the said Contract, with the Sum-
 monds raised thereupon at my Instance, against
 ——— E. now of ——— Eldest lawful Son, and
 Heir Male to the said Deceast C. his Father,
 with the Letters of Inhibition raised thereupon,
 and Executions thereof, to be keeped and used
 by him and his foresaid, as their own proper
 Writs and Evidents, at their pleasure in time
 coming.

Among this sort, I may place Assigna-
 tions by Tennents of the Tacks set
 to them by their Masters: Whereof
 the Form is thus.

BE it known, &c. Me ——— Forasmuch
 as &c. (here narrate the Tack) And
 seeing B. hath made Payment to me, &c.
 Therefore to have Made, Constituted and Or-
 dained, &c. Assigneys in and to the said Tack
 and Affedation, during the whole Years and
 Terms thereof yet to run, and to all Clauses and
 Obligements therein-contained, Profits and Emo-
 luments that may arise therethrough, and in
 and

and to all Action, &c. Surrogating, &c. with power to the said B. to Occupy and Possess the said Lands, with their own Goods, or to set them to Tennents as they shall think most expedient, and to Intromet with, and Uptake the Mails, Ferms, Profits and Duties thereof, during all the Tears and Terms mentioned in the said Affedation, and yet to run. They paying the Mails and Duties contained in the same to the said ——— at the Terms therein-exprest. And also to use the said Tack and Affedation, sicklike, and as freely in all things, as I might have used the same my self, before the making of this Assignment, &c.

Assignment of a Liferent-Right.

I A. for diverse Onerous Causes and Considerations moving me, by these presents, make and constitute B. my lawful Son, and his Heirs, Executors and Assignneys, my very lawful, undoubted and irrevocable Cessioners and Assignneys, in and to my Liferent Right of the Sums of Money after-specified, and Annualrent thereof, whereunto I am provided during my Lifetime, conform to the Bonds after-mentioned, granted by the Persons after-nominated, every one of them for their own parts, as is after-divided, viz. The Sum of ——— as Principal, and the Sum of ——— as Liquidate Expences, contained in a Bond granted by ——— of ——— for my Liferent use allenarly, and to the said ———
his

his Heirs, Executors or Assignees in Fee, of the date——(and so forth of all the rest of the Bonds,) and in and to my Liferent-Right of the ordinary Annualrent of the said principal Sums of all Years and Terms bygone resting unpaid, and sicklike, of all Years and Terms to come, during the not-payment thereof, conform to the foresaid Bonds; and in and to the same Bonds, whole Clauses, &c. and to all Action, &c. Surrogating, &c. with full power, &c. The other Clauses of an Assignment in common Form; Likeas, I have delivered to the said B. so many of the said Bonds as I have in my custody, to be keep'd, &c.

Thus much of Assignations to particular Subjects; It remains, that we treat of general Assignations or Rights of all the Cedents Debts and Goods whatever, without mentioning any kind; such is the Right of Moveables, in place of a Testament, in the following Example.

BE it known, &c. *Me E. For the Love, Favour and Affection which I have and bear to A. my Eldest Lawful Son, and for the better enabling him to make Payment of such Debts and Sums of Money as I am presently resting, or that shall happen to be resting by me the time*
of

of my decease, and for the defraying the Expences of my Sickness and Funerals; To have Made, Constituted and Ordain'd, Likeas, I by these presents under the Provisions, Reservations and Conditions after-mentioned, Make, Constitute and Ordain the said A. his Heirs and Executors, my Cessioners and Assigneys, in and to all Debts, Sums of Money, Goods, Gear, Mails and Duties of Lands, Houses and others, Household-plenishing, Cloaths, Woollen and Linnen, and all other Furniture within my said Dwelling-house, or without the same, pertaining, or which at any time hereafter during my Lifetime, and at my Death shall happen to pertain, belong, or be addebted to me, and to all Bonds, Contracts, Accompts, Tickets, Decreets, Sentences, and other Writs and Evidents, granted or received by me at any time bygone, or to come during my said Lifetime. And without prejudice of the generality foresaid, in and to the Sum of ——— addebted by ——— conform to his Bond granted thereanent, dated ——— and in and to (here take in the rest of the Bonds) and to the Mails and Duties resting by ——— for his Dwelling-House in ——— possess by him, and pertaining to me: Surrogating and Substituting the said A. and his foresaid, under the Provisions and Reservations aftermentioned, in my full Right, and place of the Premises for ever; dispensing with the generality, and admitting and declaring the same to be as valid, effectual and sufficient, to all intents and

purposes, as if each Debt, and the whole Household-plenishing, Goods, Gear and others, hereby assigned, were particularly and expressly herein-named and insert; Reserving always to me, my Liferent of the Sums of Money, Goods, Gear and others, above-assigned, during all the Days of my Lifetime; Reserving also Power and Liberty to me, at any time during my Lifetime, not only to Uplift, Discharge, Assign, and otherways dispose upon, and make use of the Sums of Money and others, particularly and generally above-mentioned; But also, to affect and burden this present Assignment Sums and others hereby Assigned, with such Legacies, Gifts and Provisions, as I shall think fit to nominate and appoint in a Writ, to be subscribed with my hand at any time hereafter in my Lifetime, and failzieing such a Writ, or in Case thereof, the superplus of the Sums of Money, and Prices of the Plenishing, and other Goods and Gear above-assigned, than what pays the Expences of my Sicknes and Funerals, and all other Debts, if any be, that shall happen to be resting at my Death, to be applyed by him to himself and for his own use; and in case the said Debts, Funerals and other Expences, with the Legacies to be contained in the said Paper apart, shall exceed the Moveables hereby assigned, the said A. and his foresaid is to be no further lyable than for what he shall receive by vertue of this Right and Assignment, and the remainder to affect the Houses

Houses and others above-mentioned in the first place, before any of the Legacies or Provisions contained in the said Writ, with full power to the said A. and his foresaid, under the Reservations and Provisions above-mentioned, immediately after my decease, to ask, crave, receive, intromet with and uplift the Sums of Money, particularly and generally above-assigned, and to Roup, Sell, and otherwise Dispose upon the Household-plenishing, and other Goods and Gear above-mentioned, and to apply the Prices thereof, as is above-provided. And that this present Right and Assignment may be the more effectual, I by these presents, revoke, recal, and annul, all former Assignations, Rights and Dispositions, of the Premisses, or any part thereof, granted by me to any Person or Persons in Trust, and otherways, preceeding the Day and Date hereof: And likeways, I by these presents, Annul and Discharge all former Testaments, Latter-wills, Provisions and Legacies, prejudicial hereto, excepting allenarly the Provisions contained in the Writs and Papers subscribed by me, upon the Day and Date hereof, which yet are to affect the Moveables hereby Disposed: And further, I hereby declare, That notwithstanding this present Assignment is to remain with me and in my custody, during all the Days of my Lifetime, and to be made use of only after my decease, yet the same shall be as valid, effectual and sufficient, to all Intents and Pur-

poses, as if they were a delivered Evident at the Date hereof. Registration for preservation.

But, for a singular pattern, I here give you the Copy of the general Assignment of all Sums, &c. made by Sir John Nisbet of Dirletoun Advocat, to King Cha. 2d. A Learned Lawyer, to his Heirs of Tailzy, with Provisions in favours of his other Kindred and Friends, which was formed by James Hay of Carribber, an Experienced and knowing Writer to the Signet.

BE it known, &c. Me A. Forasmuch as, I have thought fit to settle and provide my Estate and Lands, Teinds and others, failzieing Heirs of my own Body, in manner contained in a Paper of the date of these Presents; And seeing it is fit, that in the Case foresaid, I should provide likewise my other Estate, wherewith it hath pleased the Lord to bless me in Money and Bonds, or otherways, and upon serious and good Considerations, I have resolved to provide the same in manner under-written, Therefore to have Disponed, Transferred and Assigned, Failzieing Heirs Male of my own Body, and with and under the Conditions after-specified, to and in favours of B. the Heirs Male of his Body, which failzieing, &c. all and whatsoever Debts, and Sums of Money Here-
table

table or Moveable, due to me, by whatsoever Person or Persons, by Bond, Contract, Infeftment, or without the same, or any other manner of way, pertaining presently to me, or which shall hereafter pertain to me the time of my decease, and which are, or shall be contained in a Book containing the Note and List of Bonds and other Receipts, whereby any Sum or Sums of Money is due to me, or which shall be contain'd in an Inventory which shall be made at any time, of the Debts, Bonds and other Writs, whereby the same are, or shall be due, holding the generality foresaid, to be as sufficient, as if the whole particulars were expressly enumerated, and set down; Likeas, I by these presents, Assign, Transfer and Dispone, in the case foresaid, to the said B. and the Heirs of Tailzie and Provision above-specified, all and sundry the said Sums of Money, and Debts, Heretable and Moveable, presently due, and pertaining to me, by whatsoever Person or Persons at any time hereafter, with the Bonds, Contracts, Infeftments, and all other Rights granted to me, or my Cedents thereupon, Providing always, Likeas, &c. That it shall not be lawful to the said B. and other Heirs above-specified, to uplift and dispose of the said Sums of Money, pertaining, or which shall pertain to me, or to employ the same or any part thereof, for any other use than the uses under-written; and if the said B. or any of the Heirs above-specified, shall contravene this Provision, the Controveener for himself

self and the Heirs of his Body, shall lose their Right to the Sums of Money, and Debts, above-assigned, and the same shall pertain to the next Person having Right to succeed by the foresaid Provision and Entail, who shall be lyable to employ the said Sums in manner following, That is to say, my Debts being satisfied, which are presently due by me, or which shall be due the time of my decease; and the Provisions and Obligements after-specified, in favours of the Persons under-written, my Friends and Relations being likeways satisfied, the Residue of my Estate in Money shall be employed in the Purchase of well-holden Lands, and Teinds of the same, where they may be most conveniently had, and in special in East or Mid-Lothian, or the Merse, as near to my other Estate as can be, effeiring and equivalent to the said free Residue of my Estate in Money. And in case it shall be necessary and expedient, to uplift any of the said Sums, before there can be any occasion for purchase; Then, and in that case, it is provided, that such Sums as shall be uplifted, shall be re-employed always with the burden of the Provision foresaid, So that the same shall not be uplifted and employed for any other use, than is above-mentioned. And farther, out of the tender respect I have to the memory of — my worthy Father, to whose great care and affection, and Breeding me in Vertue and Letters, I acknowledge, that under God, I owe the Estate that God has blest me with; And seeing I have no Male Children of

my

my own Body, to represent me, and my only Daughter having gotten from me, a competent Tocher. I have been careful, that she and her Children, if there should be any, should be well, and plentifully provided by her Contract of Marriage, and Infestment following upon the same. And in regard, that after the Decease of my Father,—his second Daughter being bestowed in Marriage with the Deceast ——— I did obtain for him by my moyen, a Place in ——— and in these Places, he having acquired a considerable Estate, he did bestow his Daughters, with my Sister, Creditfully, and did give with them large Portions, and Tochers; to which they got considerable Additions of his Means, after his Decease; So that their Husbands and they, are in a very good Condition: Therefore for the better Provision, and help of my said Father, his other Grand-Children and great Grand-Children after-mentioned, I Bind and Oblige me, and the said B. and the other Heirs of Tailzie and Provision foresaid: Likeas, by accepting this present Right, they shall be Bound and Obligated, to have in readiness, against the first Term of Whitsunday or Martinmas after my Decease, the Sums of Money after-mentioned respective, extending together, to the Sum of 50000 Merks, to be employed for, and towards the purchase of Land, effeiring to the said Sum to my self, and to the said B. and my said other Heirs of Tailzie and Provision. And thereafter

to

to be given, and Disposed by my foresaids, to be holden of them, viz. (there was the division of the Sums to his Friends) which Sums are given and provided by me, to the effect, that they may be employed upon Land in manner foresaid and no otherways: Likeas, I Bind and Oblige me and my foresaid, in case I have no Heirs Male of my own Body, the time of my Decease, to employ the said Sum of 20000 Merks for——— and upon the Purchase and Acquiring of Lands effeiring and equivalent to the foresaid Sum, to my self and my foresaid: And the same being Purchas'd, to give and Dispose the said Lands and Teinds thereof, if the same be acquired therewith, to the said——— and the Heirs of his Body, which failzying, to his other Heirs successive, descending always of the said——— my Father, the Eldest always if Female being preferred, and succeeding without division: Which all failzieing, to return to my Family and my Heirs of Tailzie and Provision foresaid, to be holden of me or my foresaid, Feu or Blensch, for payment of 40 lib. Scots of Feu-duty Yearly, and with and under the Provisions and Conditions underwritten: Likeas, it is provided, that the said Lands shall be acquired and the Right thereof taken to the said B. and his foresaid, and that they shall be Disposed by them to the said——— and his foresaid, with the Conditions and Provisions contain'd in the Bond of Tailzie, of the date of these presents and in the Assignment above-

bove-specified in favours of the said B. and his
 foresaid, for securing and preserving the Tail-
 zie and course of Succession foresaid: Which
 Provisions and Clauses irritant, are holden as
 exprest, as they are set down expressly or rela-
 tively, and shall be insert in the Rights and
 Infestments to be granted to the said B. and his
 foresaid of the Lands to be purchas'd; and
 likeways in the Rights and Infestments to be
 granted by the said B. or his foresaid to the
 said ——— and his foresaid. And it is like-
 ways declared, that the Lands so to be pur-
 chas'd for the said ——— shall be burdened with
 the Liferent of the said ——— his Mother, as
 to two third parts of the same during her Life-
 time, and in case she decease before her said
 Husband, with the said ——— his Liferent of
 the half of the said Lands; which Liferents to
 the said ——— and ——— respectively, are
 declared now as if the said Lands were purchas'd,
 and then as now, to be reserved to them respec-
 tively. And in like manner, I bind and
 oblige me and my foresaid, in case I have no
 Heirs of my own Body the time of my decease,
 to employ the said Sum of 20000 Merks above-
 appointed for the said ——— (here the Clause
 immediatly above-written was repeated in
 favours of the said ——— in the same very
 Terms verbatim) As also to the other
 Friends nothing followed but a common
 Clause reserving power to alter, *etiam in*
articulo mortis; and a Declaration that this

Right should be valid Evident, notwithstanding that the same be lying in the Grantees Custody the time of his decease. After the Witnesses Names were insert, Sir John caused add this Clause. *It is further declared, that it is my intention, that the Lands to be purchas'd and given to the Grand-Children, and Great-Grand-Children of my Father in manner above-written, should be purchas'd and acquired in the Shires of East-Lothian, or Mid-Lothian or the Merse, as near to my Lands as can be conveniently had. Likeas, it is provided and declared, that until occasion offer of any Bargain or Purchase, for the said Persons and their foresaid respectively, the said ——— and my other Heirs of Provision above-specified, shall be Lyable: Likeas, they shall be obliged by acceptation hercof, to pay the Annualrent of the Sums respectively, from the first Term of Whitsunday or Martinmas after my decease, until the Lands to be purchas'd in manner foresaid, be Disposed to them respectively. Followed the Subscription.*

Under general Assignations of Moveables, I comprehend Rights to all Casualties of Superiority, because the extent of them is not in the Conveyance defin'd and determin'd, such as,

An Assignation of an Escheat, and Bonds are fall'n under Forfaulture.

BE it known, &c. *Me A. Forasmuch as, (here narrate the Gift of Escheat) And*

now seeing that C. hath made payment to me of a certain Sum of Money for granting of the Right and Assignment under-written, wherewith, &c. Therefore, wit ye me, to have made and constituted, as I by these presents &c. the said C. his Heirs and Donators, my very lawful Cessioners and Assignees, in and to the foresaid Gifts of Escheat, and all Right that I have thereby to all Goods, Gear, Moveable and Immovable Debts, Tacks, Steadings, Rooms, Possessions, Acts, Contracts, Actions, Obligations, Assignations, Debts, Sentences, Sums of Money, Jewels, Gold, Silver, coined and uncoined, Insight-Plenishing, and other Goods and Gear Escheatable whatsoever, which pertained formerly to the said B. the time of his being Forfaulted for the Causes above mentioned, or at any time since : And further, to have Sold, Assigned, Transferred and Disposed, as I &c. to the said C. and his foresaid, all and whatsoever Bonds, Heretable and Moveable, Annualrents, Wadsets, Adjudications, Apprysings, Tacks and Rights of Teinds, Decrees and other Writs, Evidents and Securities whatsoever, made and granted to the said B. or any of his Predecessors to whom he is Apparent Heir, or nearest of Kin, and all Sums of Money, principal Annualrents, Penalties, Expences and Sheriff Fees contained therein, or due by vertue thereof, together with the Gift and Assignment above-mentioned given by ——— to me of the same, and all that has followed or may follow

thereupon, Surrogating and Substituting—
 with power to——and dispose upon the Goods,
 Gear, Debts, Sums of Money and others, par-
 ticularly and generally above written, and if
 need be, to call and pursue therefore, and obtain
 Decrees and Declarators, general and special
 thereupon, and to use all manner of Legal Di-
 ligence for recovering thereof, Compose, Tran-
 sact and Agree thereanent, and generally, &c.
 Likeas, I have herewith delivered to the said
 ——the Gift above-mentioned, to be keep'd,
 &c. And also.

An Assignment or Gift of Ward, Non-
 entry, and Marriage, of an Apparent
 Heir, as follows.

BE it known, &c. Me A. Superior of the
 Lands and others under-written, for di-
 verse good Causes and Considerations moving me
 to have given, granted and disposed, as I by
 these presents give, grant, and dispoise to B. his
 Heirs or Assignneys, one or more, the Ward and
 and Non-entry, Mails, Firms, Kains, Cu-
 stoms, Casualties, Profits and Duties, of all
 and whole——with Pertinents lying &c. of
 all Years and Terms bygone that the same has
 been in our Hands, and ay and while the lawful
 Entry of the said deceased C. his Heirs or Assign-
 neys thereto, being of lawful Age; Together,
 with the Marriage of his Son and Apparent
 Heir,

Heir, to the said deceast C. his Father, and failzieing of him by decease unmarried, the Marriage of any other Heir or Heirs, with the whole Profits of the said Marriage, with full power to the said B. and his foresaid, to ask, crave, receive, intromet with, and uptake the foresaid Ward and Non-entry, Mails, Firms, Kains, Customs, Casualties, Profits and Duties of the Lands and others above-written, of all Tears and Terms bygone, and to come above-rehearsst, & Profits of the said Marriage, and thereupon to dispose at their pleasure, and to occupy the foresaid Lands with their own Pleugh and Goods, or set the same to Tennents, during the space of the said Ward and Non-entry, and either of them, with Court, Plaint, Herezeld, and with all and sundry other Commodities, Liberties, Priviledges, Easements, and righteous Pertinents whatsoever, freely, quietly, well and in peace, without any Revocation, or Reservation, whatsoever.

An Assignation of a Gift of Non-entry, by a Trustee in favours of a Wife, for whose behoof this Gift was obtained, secluding the *Jus Mariti*, by an expresse Quality and Provision of of this Conveyance.

BE it known, &c. Me A. Foreasmuch as (here narrate the Gift) And seeing my Name was only entrusted in the same Gift, for
the

the behoof of B. and upon the expresse condition,
 That I should Denude my self thereof, in man-
 ner after-mentioned: Therefore, wit ye me,
 to have Assigned, Transferred and Disposed, as
 I by these presents Assign &c. to the said B.
 under the Conditions, Provisions and Limitati-
 ons after rehearst, the Non-entry Duties of the
 foresaid Annualrent of——— corresponding to
 the said Sum of——— and that of all Years and
 Terms bygone, whereunto I have Right by the
 foresaid Gift, and of all Years and Terms to
 come, ay, and while the lawful Entry of the
 righteous Heir, or Heirs thereto, being of lawful
 Age, together with foresaid Gift it self, Pro-
 cess of Declarator raised thereupon, and all Acti-
 on, Instance and Benefite competent, or that
 may be competent to me, by vertue thereof, un-
 der the Conditions, Provisions, and Limitati-
 ons after-rehearst. To wit, that the said B.
 is to have the only Right to the foresaid Non-
 entry Duties bygone, and to come, for the Ali-
 ment, Subsistence, and Entertainment of her,
 and her Children; with this expresse Provision,
 That B. her Husband, and his Creditors, shall
 be secluded from all Right or Interest therein Ju-
 re Mariti, or otherways, and shall have no pow-
 er to Assign, or Dispose thereupon, nor do any
 Deed to avert or mis-apply the said Non-entry
 Duties, for any other end or use, except for the
 Aliment of the Lady and her Children. And
 likewise, in regard the foresaid Non-entry
 Du-

Duties and Gift thereof, are expressly designed and intended for the Aliment, and Subsistence of the said Lady and her Children. Therefore, it is hereby provided, and declared, that the same shall not be subject, nor lyable to any Arrestments, or other Legal Diligence, at the Instance of the Husbands Creditors, for Debts Contracted, or that shall be Contracted by him, declaring all such Debts and Deeds, and Diligences, that may be used thereupon, to be in themselves Null and Void. And that, notwithstanding thereof, the said B. shall have Power and Right to Uplift and Intromet with the said Non-entry Duties for the use above-mentioned, and to grant Discharges thereof, by her self alone, without consent of her Husband, which shall be a sufficient Exoneration to the Receivers. And it is farther hereby declared and provided, That, in case it shall happen, the said Lady to Decease before her Husband; in that case, what of the Non-entry Duties remains unuplifted for the time, shall pertain equally to her Children and their Heirs (secluding Executors) with full Power to the said Lady, to Ask, Crave, Receive, Intromet with, and Uplift the Non-entry Duties above Assigned, and to dispose thereupon to the use above-mentioned, Compone, Transact and Agree thereanent; And generally, all other things concerning the Premisses, to Do, Use and Exerce, that I might have done my self, before the granting of this present Assignment. Which Assignment, I Bind and Oblige

Oblige me, my Heirs, Successors and Executors, to Warrant to the said B. and her said Children, and their foresaid, from all Facts, and Deeds done, and to be done by me, or my foresaid, at any time bygone, or to come, prejudicial hereto allenarly. Likeas, I have instantly herewith delivered to the said B. the foresaid Gift, under the Privy Seal, with the Summonds of Declarator raised thereupon to be prosecuted, either in my name, or her own, as she shall think fit. Registration for Preservation.

Besides the variety arising from the three Circumstances above discoursed of, there be a fourth; which we may impute to the quality of the Right, or design of the Parties: And that makes another division of Assignations into *Redeemable*; and *Irredeemable*. The Irredeemable ones are these already treated of; The Redeemable Assignations are such, as are granted in security of a Debt, or for relief of Cautionry, so that, upon Payment, the Right *ipso jure* returns to the Cedent, if he was not divested of the possession. And by paction of parties, there's a Reversion competent to the Disposer. For knowing of which sort, take an example of

An Assignment of Mails and Duties, for farther security of a Debt.

BE it known, &c. Me A. Forasmuch as, (narrate the Bond) And it being just and reasonable; that the said B. be secured, concerning the Payment to her, of the foresaid Annuity of 2400 Merks Yearly, as well of such Years and Terms as are bygone resting unpaid, as in time coming. Therefore, in Corroboration of the said Bond, and former Securities granted to her for the same; And that without prejudice or derogation thereto, or to any Diligence competent to follow thereupon, sed accumulando jura juribus, Wit ye me to have Assigned and Disposed: Likeas, I &c. to the said B. as much of the first and readiest of the Mails, Firms and Duties of the Lands and Barony of ——— and other Lands, Houses and Aikers helonging to me lying &c. due for the present Year 1715, and in time coming, as will satisfy and pay her the foresaid Annuity, and Termly Penalties thereof in case of Failure; And that as well of all Years and Terms bygone resting unpaid as in time coming, during her Lifetime; with full power to her; to Uplift and receive the same, and to grant Discharges upon the Receipt thereof in whole or in part, which shall be sufficient to the Receivers. And if need be, to Call and Pursue therefore,

M m and

and to use all manner of Legal Diligence against the Tennents and Possessors of the said Lands, upon the Decreets already recovered, or to be recovered by her, for obtaining payment thereof. It is always hereby declared, That what the said B. shall recover, by vertue of this Disposition and Assignation, shall be counted in part of payment of the foresaid Annuity, and Termly Penalties thereof, that are or shall be incurred. And, for farther security thereanent, I C. Son to the said A. do hereby consent to this Disposition and Assignation; And declare, that whatsoever Rights the said A. has Granted, or shall Grant in my favours shall noways prejudice, nor come in competition with the Rights granted to the said B. for the Annuity above-written, during her Lifetime, nor what is Resting thereof for bygones, nor shall interrupt any Diligence necessary to be used at her Instance thereanent; Which Disposition and Assignation, I the said A. do hereby Bind and Oblige me, my Heirs and Successors, to Warrant to the said B. at all hands, and against all deadly; and that I shall keep the said Lands possess'd by sufficient Tennents, who shall be able to pay their Rents. Registration.

When for further security, and in Corroboration of prior Bonds, Assignation is granted and subjoined to the Bond of Corroboration, whether of Moveables or Heretables, as Infeftments of Annualrent or the

the like; it is most proper, that it contain for the Creditor's security, a Declaration in his favours, that albeit he be Assigned thereto in Corroboration, yet he should not be obliged to intrómet therewith, or do Diligence therefore, but if he pleased, and should not be obliged to Compt, but according to his Actual Intromission and no farther.

Of Assignations in Trust, for doing Diligence.

A Signations, to Sums of Money and Securities therefore, being made to a Common Creditor for doing Diligence, do not differ from the Common Assignations, but run on *verbatim*, in the same Stile, neither make they mention of a Backbond: And this is the most general way. But I have seen another way, which I look upon as more sure and convenient, and it is thus: The Bond and other Rights being narrated, the cause is, *And seeing that B. who is also Creditor to the said Deceast* — is to intent *Actiõ* against — now of that Ilk, Son and Apparent Heir to the said — for certain Sums of Money due to himself, which may be done upon the less Expence, if the Debt, contained in the Bond above-mentioned, were also Assigned to him, that there be one Dili-

gence done for all; Therefore, &c. an Assignation in common form, Surrogating the Assigney in the Cedents full Right, and Place of the Premisses, to the effect above-mentioned, and the Writs were to be used by him to the effect above-written. Providing always that the said B. be holden and obliged, as he by acceptance hereof, Bind and Obliges him, his Heirs, Successors and Executors, to Repone and Retrocess me in the Right of the said Bond, and Denude himself in my favours, of what Diligence shall be done thereupon in his name: With warrandice, from his own proper Fact and Deed, and the Writs to be granted thereanent, being formed and exepede, upon my proper Charges and Expences, conform to an Backbond Granted, or to be Granted, by him to me thereanent.

Sometimes one makes Assignation to a Person, that he may use Diligence upon the Bond, and pursue for payment of the Sums; which Assigney gives a Backbond to the Cedent. And, if it happens, that in implement of the Backbond, an Assignation is made to a third Party, at the Truster's desire. But thereafter upon another view and design, that Debt and Diligence is taken from this last Assigney and given to another Person, to prevent the multiplication of Writs, the Trustee and last Cedent be desired, upon getting up of his last Assignation,

signation, to sign a new one in favours of another Person, after the Warrantice of the second Assignment, there must be an Exception of the first Assignment, in this form, *Declaring nevertheless, that the Assignment of the foresaid Bond and Sums, which was granted by me to P. shall not infer an controvention of this Warrantice ; the same being now retired by me and cancelled.*

A. getting Right from his Majesty to B's Lands and Estate, fallen by Forfaulture, and to his Escheat, he Dispones the Lands to sundry Persons for B's behoof, who had obtained Remission, and that Escheat to B. himself. In the Warrantice of this last Assignment it is declared. *That the Disposition granted for his behoof in manner foresaid of the said Lands and others (which likeways might be comprehended under Escheat, as the Mails, Tacks, &c. and Sums particularly and generally thereinmentioned, shall not be interpreted any controvention of this Warrantice, nor infer double Warrantice against him.*

When a moveable Sum is Tailzied, and the Assignations, either general or special, are granted with Provisions or Restrictions, the Persons in the Tailzie are subjoined one after another, in that part of the Right, where the Assigney's Name is placed, and the Provisions are put in the Clause of *Surrogating, &c* And in the Assigning Clause which is before, and in the after part of the Right,

Right, you say Relatively, under the Provisions and Conditions after or above-mentioned, as thus, *made and constitute A. and the Heirs of his Body, which failzying B. and the Heirs of his Body, &c. and in and to all Action &c. under the Provisions and Restrictions after-mentioned, Surrogating, &c. the said A. and his foresaid, which failzying as said is, in my full Right and place of the Premisses, under the Provisions and Conditions always after-specified, viz.—— with power, &c.* But I have seen the Provisions subjoined to the Clause of Assignment, and before the Clause, *Surrogating.*

When there is Reservation made by the Cedent in favours of himself, or any other Person, the Substitution and Surrogation in his full Right and Place, must bear the Assigney, only to his Right and Place of the Premisses *pro tanto.*

Of Translations.

A Translation is a continuation of the Conveyance of a moveable Subject, by the Assigney to another Person; and generally the following Conveyances are called Translations, tho' in a fourth or fifth degree of distance from the Assigney. Others again call such, *Dispositions.* But there's no settled denomination for such
Writes;

Writes; albeit the Stile of them be fixed.

What has been said of Assignations, respects also Translations.

In the beginning to the ordinary Designation, you put an additional one, thus, *Assigney after-specified, or, as having Right by Assignaion, (or Translation or Disposition) in manner after-mentioned.* And after the Bond or Diligence, or rather after copying the narrative of the Assignation, you narrate the Assignation it self in the ordinary form, and that the same was duely intimated, if it was so, and then you mention the cause of granting, which is the same as in Assignations.

Translation of a Bond and Sums therein contain'd, whereupon no Diligence hath as yet followed.

BE it known, &c. *Me A. Assigney after-specified, Forasmuch as (here narrate the Bond and an Assignation thereof in common form) And now seeing that B. in name and behalf of C. hath made payment to me of a certain Sum of Money for granting the Translation under-written, wherewith &c. and discharge the said C. and also the said B. &c. Renouncing &c. Therefore wit ye me, to have Sold, Assigned, Transferred and Disposed, as*
I

I by these presents Sell, &c. to the said B. for the behoof of the said C. the said Sum of 20000 Merks, and 2000 lib. of Liquidate Expences and the Annualrent of the said principal Sum resting unpaid since the Term of Whitsunday 1707 Years, and in time coming during the not payment thereof; As also the Bond above-written, with the Assignment made to me thereof, Surrogating, the said B. for the behalf foresaid, &c. with power to him or any other who shall be entrusted by the said C. to ask &c. and to grant Discharges &c. and if need be to cause Register the said Bond &c. Compone &c. and generally &c. Which Translation I oblige me and my ——— to warrant to the said B. for the behoof above-mentioned, from my own proper Fact and Deed. Likeas, I have instantly herewith delivered to the said B. for the behoof above-written, the principal Bond and Assignment above-specified, both unregistred, to be kept and used by him or his foresaid, as their own proper Evidents. Registration for preservation, and Execution if need be.

In Translations and other Conveyances of Assignations, if there be many bonds in the Narrative, whether granted by the same or by distinct Persons, to the Cedent, and if the Assignations to them are of different dates, and granted at several times, they are narrated in the same order with the Bond. This was James Hay's practice even in Assignations of the same date. The difference

rence of the Stile, in an Assignment and Translation, is this, that the Stile of the Assignment runs thus, *I make B. his Heirs and Donators my very lawful Cessioners and Assignees, in and to the Sum of———&c.* The Stile of an Translation is thus, *I have sold, Assigned, Transferred and Disposed, Likeas, &c. to B. his Heirs or Assignees, the Sum of———&c.* The Bond and Assignment are narrated in the Narrative, and where ever the Bond is mentioned, the Assignment must be spoken of too. In the Clause of Translation, as there is a Translation of the Bond, so must there likewise be of the Assignment, which must be delivered up with the Bond. So that I remark no Material, and even scarce a verbal difference.

In the Clause of Translation of a Bond and Sums contained in a general Disposition, and Assignment of several other Bonds, Compts, Debts, and Sums of Money, the Stile of the Translation of the Assignment did run thus, *And in and to the foresaid Assignment made to me of the Premises; in so far as the same may be extended to the Sums hereby Transferred.* In which case also, the Assignment cannot be delivered up, as is usual; because it is a Right to other and greater Sums, so there must be an Obligation, in these or the like words; *As also I bind and oblige me and my foresaid, to make the said Disposition and Assignment forthcoming*

to the said B. when he shall have necessarily to do therewith. And this is put before the Clause of delivery of the Bond.

In Assignations or Translations, made by an Heir or Executor, of Goods belonging to his Father, or other Predecessor, the Cedent warrants it, not only from his own Fact, but from that of his Predecessors; the same must be done in case the Transferrer have right by Assignment from a conjunct Person. The reason is, because, such Assignations being for the most part but Gifts, wherein there is no Warrandice at all, the Cedent, in this Translation, is, in all equity, obliged to secure his Assigney, from all hazard.

Of Retrocessions.

A Retrocession is a Writ, by the Assigney, reponing and restoring the Cedent in his full Right and Place; with the same power he had, before the Assignment. It is most commonly used, when an Assigney in trust, denudes himself in favours of the Truster; and it is in this form.

The Narrative being premis'd, in which commonly the Assignment or Translation is deduc'd; Or sometime the Backbond is narrated. After which follows the Subsumption
which

which is various, according to the circumstance and Bargain of Parties. Thus a Tutor to a Minor whose Father had got Right to certain Sums for security of a Debt owing to him, and had granted Back-bond, being about to Retrocess the Cedent, Subsumes. And seeing the said B. did not recover payment of the two Debts above-mentioned which were due by——as also seeing the said C. hath given to the said B. my Pupil a Discharge of the Back-bond above-specified, where through in all Equity and Reason he ought to be reponed to his own Right and Place of the two Debts above-written due by the said——and his Cautioner, and by the said——Therefore, &c. Another Form of a Subsumption is this, And seeing my Name was only borrowed to the Assignment, Translation and Disposition above-rehearsed by the said C. upon my faithful promise for denuding me thereof in his favour, in manner, after exprest. Therefore, &c.

The peculiar Stile of the Retrocession, is what follows, therefore wit ye me, to have reponed, restored, and retrocess'd, as I by these presents, &c. the said C. his Heirs or Assignees, secluding his Executors to his own Right and Place of the two Debts above-specified due by the said——and his Cautioner, and by the said——with the Assignment and Translation of the first Bond, and the Assignment of the said second Bond, and all that has followed, or may follow thereupon. Surrogating, &c.

With power &c. as in a Translation. And generally all other things &c. before the granting of this Retrocession, which I oblige me to warrant from Fact and Deed in common Form. Likeas, I have delivered back to him the Extracts of the two Bonds, &c.

Of Vendition of Ships.

Ships, Boats, Barks, and the like Machines, moving on the Water, are Conveyed, by a Moveable Right, which is of a peculiar Stile, and is called a Vendition, thus,

BE it known, &c. *Me A. Master of the good Ship called, &c. which I lately caused build in &c. and which cost me, by the fitted Account subscribed by the Owners, 1054 lib sterl. Money, for the Sum of——— Money foresaid, as the just sixteenth Part of the said whole Sum contented, payed, and really and with effect, delivered to me, by B. whereof I by these presents grant the Receipt, Renouncing all Exceptions and Objections in the contrar; and by these presents exonerating and discharging the said B. his Heirs, Executors, and all others whom it concerns of the same for ever. To have Sold and Disposed; Likeas, I by these presents sell and dispoise to and in favours of the said B. his Heirs*

Heirs and Assignneys (secluding Executors) all and whole, the just sixteenth part of the said Ship called ——— with the sixteenth part of the Guns, Tows, Sails, Anchors, Masts, Raes, Oars, Float-boats, and all other Furniture and Pertinents belonging thereto; Together with all Right, Title, Interest I have or can pretend to the same: And I hereby surrogat and substitute the said B. and his foresaid, in my full Right and Place of the said sixteenth part of the said Ship and Pertinents. And further, I bind and oblige me, my Heirs, Executors and Successors, to make just Compt and Reckoning to the said B. his Heirs and Assignneys, (secluding Executors) of all and sundry the Fraughts of the whole Voyages the said Ship shall happen to ply without or within this Kingdom, and to make Payment to him or his foresaid, of the of the whole Profite which the foresaid sixteenth part of the said Ship shall happen to make, and that after each time of her return within this Realm, before any resailing furth thereof, or at any Port or Place Abroad when I am required. The which Vendition, I bind and oblige me and my foresaid, to be good and sufficient to the said B. and his foresaid, for their Right to the said sixteenth part, and free in all Waters, Passages, Roads, Rivers and Creeks, within or without this Kingdom, from all Debts and Sums of Money, Arrestments, that may in any way marr or impede him or his foresaids, in the peaceable Possession

Possession thereof, by any Fact or Deed of mine done, or to be done prejudicial thereto. Registration.

Of Testaments.

MOVEABLES are conveyed by a Latter will and Testament, which is a Write expressing the pleasure of the Proprietor, in the disposal and conveyance of his Moveable Estate, and the Guardianship of his Children under Age, after his decease; and it contains the Nomination of an Executor or Administrator of these Goods, which is an essential part of the Testament. But this Nomination alone will not give a Right to the Goods; save to a third part, which the Law allows to the Executor, in recompence of his Trouble. Therefore if the Testator design to give the Executor any share of his Moveable Estate, it must be done by way of Legacy; and then the Executor is made either universal Legator, or gets a determined Portion of the Moveables: For Legacies are only given in a Latter-will, under which I comprehend both Testament and Codicils, which differ from a Testament in this, *That* it has no Nomination of an Executor, *That* it presupposes one to be designed either before or after, and nevertheless are valid, tho' no
Testa-

Testament be made; for Codicils contain only Legacies, which are to be paid, either by the Executor nominate, or by the Defunct's nearest of Kin.

The Stile of a Latter-will is very Arbitrary, for the only Rule, both in the Form and Legal Effect of it, is, the Will and Pleasure of the Testator, which, if intelligible and practicable, is faithfully obeyed. The following Forms are those now in use.

I A. being for the present, by the blessing of God, in health of Body and Mind; yet considering the frailty of Man's Life, and the uncertainty of the time of my Death, Am therefore resolved, so to order my Affairs in my own time, that all differences which may fall out thereanent after my Death, may be obviated and prevented; And therefore, I make my Latter-will and Testament, as follows. In the first, I recommend my Soul to God Almighty my Creator, hoping to be saved, by the merits of Jesus Christ, my only Lord and Redeemer. And I desire my Friends when it pleases God to call me, to cause decently Inter my Body, in the ordinar Burial-place of my Family. And, as to my worldly Estate, I nominate B. my eldest Son, now on Life, and the Heirs of his Body, which failzieing C. my second Son, and the Heirs of his Body, to be my only Executor and universal Legator, and Intrrometter with
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my whole Goods, Gear, Debts, Sums of Money and Moveables, of whatsoever nature pertaining, or that shall happen to pertain, and be resting to me the time of my Decease, and falling under Testament, to whom I leave and bequeath the same, with the burden always of the payment of my Debt, and the provision of my other Children; and of what part of the Moveables is or shall be provided by me to D. my dear and well beloved Spouse. And sicklike, I nominate my said Spouse, and ——— or any three of them, my Wife being always one; and failzieing of her by Death or Marriage, the said ——— and failzieing of him, the said ——— and failzieing him the major part of the Survivers to be Tutors, to such of my Children as shall be within the Years of Tutory, the time of my Death; and that during the whole space of their Pupillarity, with power to them, or their QUORUM foresaid, to exerce the said Office, and do every thing requisite and necessary thereanent. And specially with power to them, to make choice of some honest Man, to have the only Intromission with my Estate, and Management of their Affairs, and to allow him a Sallary for his pains.

The Preamble may be thus also, Tet considering the certainty of Death, and the uncertainty of the time thereof; and being resolved to settle my Affairs in my own time, &c.

I have seen Testaments without any Preamble, thus, I A. by these presents, make
my

my Latter-will and Testament, as follows; I Nominate, &c.

If there be two or moe Legators, there is ordinarily a division of Goods and Debts, thus, To whom I Leave and Bequeath the same, to be used and disposed upon at their pleasure, according to the division following, viz. To the said B. the whole Plenishing within or without my said Dwelling House, with the whole Debts and Rests Due, and that shall be due to me by Tennents, and all Debts that shall be due by other Persons, for which there shall be no other security in Write, with my best Ring or Jewel that shall belong to me at the time of my Death; Declaring, that uncutted Webs and Silver-plate within my House, whereupon my own name is Engraven, my own wearing Cloaths, and paraphernalia or Ornaments, Rings, Watches and Jewels, except the best Ring or Jewel (as said is) shall not be included in her part. And to the said C. I leave the foresaid uncutted Webs of Cloath of all sorts, with the Silver-plat, whereupon my own name is Engraven, and all other Sums of Money, and other Moveables falling under Executry, not left to the first, which Goods, Gear, and others above-written, I leave to my said Executors, with the burden of all my Debts, that shall be Resting unpaid by me at the time of my Death, and with the burden of my Funeral Expences: The saids Debts and Funeral Expences to be equally payed betwixt them.

Tho' the power of confirming Testaments be naturally implied, and belongs *ipso jure* to all Executors; And tho' the last Testament is in Law a tacite revocation of all former; And that notwithstanding of the Testators conveying his Moveables, and binding himself and his Executors to pay Legacies; Yet he has an inherent power, to annul that Deed: Yea so as he cannot bind himself not to recal it. Nevertheless, I have seen in Testaments, a power to confirm, a Clause of Revocation of all former Testaments, and a Reservation of a power to alter or innovat, which were expressed thus. *And with power to them, to give up Inventar, Confirm Testament, and to do every thing necessar and competent to them as my Executors: And that this my Testament and Latter-will, may be the more valide and effectual. I by these presents, Revock all former Testaments and other Deeds that may militate against, or be prejudicial hereunto, reserving nevertheless to me full power and liberty at any time of my Life, in Sicknes, or upon Death-bed, vel in ipso articulo mortis, to alter and innovate these presents, and to dispose otherways upon all, or any part of the Premisses as I shall think fit by my self alone, without consent of them or either of them.*

If you desire that former Testaments or Legacies, left by Anterior Deeds, should not

not be infringed, there must be a Declaration in the last Testament, Intimating that design of the Testator; *which I have seen, in this form, And declaring, that these presents shall no ways prejudice what I have formerly done, or shall do, in favour of any other Friends, either by word or writ.*

If the Testator be to burden his Executors with Legacies, in the Clause wherein they are burden'd with the Debts, you say, *and with the burden of the Legacies underwritten, to my Friends after-named. viz. I Leave and Bequeath to ——— the Sum of ——— and so forth.*

Sometimes the Testator names a Factor, and appoints the Sallery, thus, *And I do farther appoint, that ——— shall have the only Intramission with my Son's Estate, and Management of his Affairs, during his Minority after my decease, and who is to be Comptable to my said Son's Tutors, and Curators for his Intramission and Administration Yearly, and oftner as he shall be required, and is to have the allowance of the Sum of ——— Scots Money, Yearly for his pains, beside his other Debursments and Expences: And failz ieing of him by Death, or otherways, with full power to them, or their Quorum foresaid, to appoint some, one of their own number, or any other they think fit, for the Intramission with, and Management of my Son's Affairs, and to appoint,*

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and allow such a Sallary for his pains, as they shall think reasonable.

Before, that by Act of Parliament, Testators had power to Nominate Curators to their Children, they inserted in their Latter-will a *fidei commiss.* and recommendation to their Children, to Elect the Tutors they had named for to be their Curators; which still may be made use of, and the Clause is thus. As also, *I desire my said Children after the expiring of the Years of their Tutory, to make Election of so many of my Friends above-mentioned, as shall be on Life for the time, to be Curators to them, till they attain to the Age of 21 Years compleat.*

Until the Act of Parliament 1696, Tutors and Curators were lyable for Omissions, as well as Commissions, but since that Law was made, a Testator being *in lege postie*, or which is equivalent, surviving the date of the Testament sixty Days, (otherways the dispensing with Omissions is not warranted) may Nominate Tutors and Curators, and the Minor may Elect his Curators, and dispeuce with, or Discharge all Omissions.

To conclude this Title, I give the form of a Testament and Nomination of a singular Contrivance. Thus,

I A Nominate and Appoint B. and the Heirs of his Body, to be my only Executor, universal Legator, and Intrometter with my whole Goods, Gear, Debts, Sums of Money, and Moveables of whatsoever nature pertaining, or that shall happen to pertain, and be Resting to me, the time of my Decease, to whom I Leave and Bequeath the same, with the burden always of the payment of my Debts, and the Provision of my younger Children, and of such Legacies as shall be left to any of my Friends. And sick-like, I Nominate and Appoint C. to be Sole, and only Tutor and Curator during his Lifetime, to the said B. my Son, and to all my other Children, that shall be within the Years of Tutorry or Curatory, and failzieing of him by decease, I nominate and appoint D. to be sole Tutor and Curator, to my said whole Children during the space of their Pupillarity and Minority, with full power to the said C. either by himself or any other whom he will be answerable for, to intromet with the Rents and Duties of my Son's Estate, and with his Money and Moveables: As also, with what shall belong or appertain to my other Children; In which case, I for my self, my Heirs and Executors, do hereby allow to him the Sum of——for his pains over and above his necessar Expences and Debursements; and failzieing of the said C. by decease, I allow the said Sum of——to be allowed to the said D. for his pains, in

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managing of my Son and other Childrens Estate and Means: Besides that, I allow the said C. when he cannot attend himself, to appoint a Chamberlain, with power to intromet, and to give to the said Chamberlain a reasonable Fee for his Pains Yearly, and for which Chamberlain he is to be answerable. And because I have entire confidence, both in the said C. and D. that they will faithfully and carefully manage my Son's Estate to the best advantage, and also the Portions of my other Children: Therefore, I for me, my Heirs, and Executors, do hereby expressly declare, that I have named them with this quality, and they are to accept in no other Terms; but that neither of them, nor their Heirs, nor Representatives after them, are to be charged with any Omissions concerning the said Tutor and Curatory, but they and both of them, and their Heirs and Executors, are hereby expressly exonerated and discharged to all intents and purposes. And in the next place, I request my Friends after-nam'd, to wit, E. F. G. H. or any three of them, the said E. or F. being always one of the three, to meet once in the Year, and to revise the Accompts of the Intromissions with, and management of, my Eldest Son's Estate, and of the Portions of the rest of my Children: And also, to enquire concerning their Education, with power to them or their Quorum, to approve the Accompts and Discharge the same; and particularly not to

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Charge the said C. or the said D. in case he succeed to him, with any Omissions as before is mentioned. And I declare, that the said Friends then meeting and considering of, or Discharging the said C. and D. their Accompts, shall not import nor infer upon them, or any representing any of them, their behaviour as Tutors or Pro-tutors, Curators or Pro-curators, to my said Son, or other Children, in regard, I have only desired them as Friends to be at that trouble at my request, and they are not to act in that Trust under any Legal Capacity, but merely as Trustees and Friends, to whom I have seriously recommended my Childrens Affairs.

Of Factories.

HAVING treated of such Acts and Writings, as are made and done by the Parties themselves, personally present, It remains that we set down such as give Authority to others, who are called Factors or Attorneys to do for them, and this is allowed by Law; and upon very good Reasons, seeing many times the principal Parties themselves are so hindered by Infirmary, or by such multiplicity of Business and Affairs in sundry Places, that at one time they cannot be present at all: Wherefore Factors and Attorneys are very necessary and profitable for humane Society, and they are defin'd to be, Persons qualified by

by Law, who at the request, command, or by consent of the Parties concerned, take heed, see to, and take upon them the Charge to do other Mens Business and Affairs in their absence, according to the Authority and Trust given them. The Writings giving this Power are called Factories, Commissions, or Letters of Attorney.

Here we treat only of Powers and Factories, given by private Persons, for the better Administration of their Fortunes, and peculiar Affairs; and especially for uplifting Money and receiving Rents, to which the word Commission is not properly applied, seeing according to the true use of words, it rightly signifies a Write expressing the Power and Warrant whereby Men exercising Jurisdiction, either ordinary or extraordinary, Authorise others, to hear and determine any Cause or Action, tho' this word is sometimes extended further than Matters of Judgement, and frequently made use of, where the Subject of the Factory is of great value.

Factories are either General or Particular, so nam'd from the generality or specificity of the Power, and of the Business express'd in the Commission.

A General Factory by a Merchant was thus.

BE it known, &c. Me A. Merchant in Edinburgh, Forasmuch as, I am shortly, God willing, to depart out of this Realm, for doing my lawful Affairs in Foreign Places, and being resolved to intrust to B. the ruling and governing of my Business here in this Kingdom during my absence furth thereof; Therefore, wit ye me, to have made, constitute, and ordained; Likeas, &c. the said B. my Factor to the effect under-written, Giving, granting, and committing to him, my full Power, Warrant, and Commission for me, and in my name, during my absence out of this Nation, to ask, Crave, receive, intromet with, and uplift all and sundry Debts, and Sums of Money, resting, owing to me, by Bond, Bill, Ticket, Decreet, Compt-book, or any other manner of way, by whatsoever Person or Persons, for whatsoever cause or occasion, and to call and pursue therefore before whatsoever Judges competent, as accords of the Law, and to obtain Decrets thereupon, and to cause put the same to due Execution, and to use all manner of Legal Diligence for recovering payment thereof, and to grant Discharges upon receipt of the same, in whole or in part, which shall be as sufficient to the receivers, as if I had subscribed and delivered the same

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my self; and generally all and sundry other things anent the Premisses, to do, use and exercise during my absence, that I might do myself, if I were personally present; promising to hold firm and stable, all and whatsoever things my said Factor in the Premisses lawfully does, or causes to be done, without Revocation. Providing always he make Compt, Reckoning, and payment to me at my return, of the Sums of Money so to be uplifted by him; he being satisfied for his Pains, and having deduction for his Expences. Registration.

The Motive of granting the Factory, and of chusing the Person nam'd, is various, according to the circumstance or intention of the Party, thus, Be it known, &c. Me A. for diverse Onerous Causes and good Considerations moving me, to have made and constitute, &c.

Another, Forasmuch as by my constant abode and residence in——I cannot conveniently attend my Affairs in——and having certain experience of the faithfulness, honesty, and diligence of B. Therefore, and for certain other Onerous Causes and Considerations, Wit ye me to have made, &c.

Or thus, Forasmuch as I am resolved, upon grave and weighty Considerations, to intrust the management of my Affairs, to my dear and well beloved Spouse, for the space after-mentioned, Therefore, &c.

Or

Or thus, *Forasmuch as, I am now to go A-*
broad for my Studies, And being resolved, for
the more convenient management of my Affairs,
to give the trust thereof to B. of whose fidelity,
care and Diligence, both I and my said Cura-
tors are sufficiently convinced, Therefore,
&c.

Or the Motive to make choice of the Per-
 son particularly nam'd may be thus, *And*
we being fully informed of the sufficiency, care,
fidelity and Diligence of B. to undergo the trust
aftermentioned, Therefore, &c.

In the Clause of Constitution, some Writ-
 ters say, *Factor and Commissioner, or Commis-*
sioner and Factor ; but I observe this is only
 done in Factories for uplifting Land-Rent,
 and for managing Matters of great value and
 importance.

The words expressing the Power, *To*
ask, crave, receive, intromet with, and uplift,
(or uptake) are without variation in all sort
 of Factories.

The manner of expressing the Subject
 Matter of the Commission, is various, ac-
 cording to the nature of the thing, and
 cannot be determin'd, as will appear from
 the following Examples and Cases.

In a Factory by a Relict to uplift her
 half of Moveables, and the Rents of her
 Conjunct-Fee Lands, it was thus, — *To*
uptake from the Executors and Intrometters
with the Goods and Gear, of the said deceast

C. my Husband, my half falling and pertaining to me as Relict, by the Law and Practique of Scotland, of his whole Goods, Gear, Debts, Sums of Money and others, which pertained and were resting to him the time of his decease, who deceased in the Month of ——— last by-past; And likeways, to ask, crave, receive, intromet with, and uptake the whole Mails, Farms, Kains, Customs, Casualties, Profits, and Duties of the Lands and others belonging to me, in Conjunct Fee and Liferent, of this instant Crop and Year of God 1715. And sick-like, of all Years and Terms thereafter, during my Lifetime, and if need be to call and pursue therefore, &c.

In Factorie, which are Special, the Sums, Bonds, Conveyances and Diligence, are exprest, thus, ——— To uplift from C. the Sum of 500 Merks Scots Money of Principal, and whole bygone Annualrents thereof resting unpaid, contained in a Bond granted by him to D. and failzieing of him by decease, to E. his lawful Daughter, her Heirs or Assignes, of the date ——— and in an Assignation granted by the said E. now my Spouse to me, dated ——— whercupon I raised Letters of Horning, Poinding and Arrestment, and by vertue thereof, caused Arrest ——— in the hands of ——— his Tennents. And so-forth, if there be more Bonds. To these particulars, one may subjoin (if there be occasion for it, and if it

t be the will of the Granter so to do) a general Clause, thus, *And sicklike, to ask, crave, receive and uplift, all and sundry other Debts, and Sums of Money resting, owing to me, by whatsoever Person or Persons, for whatsoever cause or occasion, &c.*

This Clause will be more illustrated by the Examples hereafter set down.

The Clause, where the manner of exercising the Power, is mentioned, varies likewise, according to the nature of the thing, and as was said, concerning the Power in Assignations, So in the above Case of a Factory to intromet with a Relicts share of Moveables, and the Duties of her Liferent-Lands. The Power was thus, ——— *And if need be to call and pursue therefore as accords of the Law, either in my Name or their own, as they shall think expedient, and to grant Acquittances and Discharges thereupon, which shall be as sufficient to the Receivers, as if I had made and subscribed the same my self; and to remove, out-put and in-put the Tennents and Possessors of the Lands and others foresaid, and to set the same for the accustomed Duty: And in like-manner to constitute Procurators and Advocats to pursue and defend for me, in all Actions and Causes to be pursued at my instance or against me: As also, to substitute and depute Factors and Commissioners under them, for managing of the Premisses, sicklike and as freely in all respects, as I could do therein my self, if I were*
Per-

Personally present. A further variety in expressing this Clause, will appear from the Cases below.

The promise to Ratify, is more briefly, thus, immediately after the power, say, *Which I promise to hold firm and stable, providing, &c.*

The Provision, that the Factor shall be Accomptable, is also various, — *Providing always, that the said B. his Heirs and Executors, shall be bound and obliged to make Compt, Reckoning and Payment to the said A. his Heirs and Executors, or to us, or to any other who shall have power to call him to an Accompt for the time, for the behoof of the said A. and his foresaid, of his whole Intromissions with the said A's Rents, Rests and Money; and that yearly or oftner as he shall be required: And likeways, that he shall do legal and exact Diligence, for ingathering of the Rents and Money, which he is hereby intrusted to uplift, and that he shall omit no duty incumbent on him for uplifting thereof, or management of the Trust that is hereby committed to him, conform to a particular Bond apart, granted by him to us thereanent, and which is relative to this present Factory, allowing to the said B. his Expence &c.*

After the Provision to Compt, comes the Clause, expressing, That allowance is to be given to the Factor, of his Charges and Expence;

pence ; and of a *premium* for his pains, which for the most part are mention'd in general Terms ; The Expence to be war'd out, cannot be determin'd but the Fee or Sallary is sometime Liquidated, and they are thus, *Allowing always to the said B. the Sum of 500 Merks Yearly for his pains, and also, his necessary Expence for doing the said Diligence ; And when there is no Sallary mention'd, that part may be omitted, keeping the rest of the Style, thus, Providing my said Factor shall be holden to make Compt, Reckoning and Payment to me, of the Rents, Goods and Gear pertaining to me, according to his Intrromissions therewith, with Deduction always of the Charges and Expences which he shall happen to Deburse concerning the Premisses, conform to his Account of the same.*

Some express the manner, how these Accompts are to be Clear'd and Proven, as, *deducing the necessary Charges and Expences—upon their honest Word and Declaration under their hands.*

To illustrate this sort of Style, I give the following Examples and Cases. A Factory by a Minor with consent of his Curators, the motive, and constitution being premis'd, say——*Committing to him full Power &c. for me and my said Curators, and in our name to Ask, Crave, Receive, Intromet with, and Uplift the whole Mails, Ferms, Kains, Customs, Casualties, Profits and Duties of whatsoever Lands*

Lands pertaining to me, within this Kingdom, for this instant Crop and Year of God——with all Rests of whatsoever preceeding Tears: As also, all and whatsoever Sums of Money, addebtred, or that shall happen to be addebtred to me, within the said Realm, both principal Sums and Profits thereof, from my Debtors. Declaring nevertheless, that at the uplifting of the principal Sums, he shall always be obliged to take the Advice and Consent in writ, of the said C. and failzieing of him by decease, of the said D. and to Call and Pursue therefore, as accords of the Law; and to give Acquittances, Renunciations and Discharges thereupon, and also to give Assignations and Translations to Bonds, for which he shall Transact, with Advice and Consent of the said C. and failzieing of him, of the said D. as said is, which shall be also sufficient to the Receivers, as if I and my saids Curators had Subscribed and Delivered the same our selves; and to Ware, Imploy and Bestow any Money that he shall Uplift, belonging to me, upon sufficient Security; and to take the Bonds that shall be granted for the same, in favours of my self, my Heirs, Executors or Assignneys: And also, to make and constitute, place and displace, at his pleasure, Advocates and Procurators, for pursuite and defence, of all and whatsoever actions intended at my instance or against me: And further, to set Tacks of my Lands, in case any of the present Tacks expire, or that the Tennents shall
hap-

happen to be removed: Always with advice of the said C. and failzieing of him by decease; of the said D. And generally to do all other things necessar and convenient for the managing of whatsoever my Affairs within the said Kingdom of Scotland, from time to time, during my Minority, as said is. Sicklike, and as freely in all respect, as I might do therein my self, if I were personally present, promising &c.

A more ample Form of Factory and Commission by a Husband to his Wife was thus,

Giving, &c. to Intromet with, and Uptake the whole Mails, Ferms, Kains, Customs, Casualties, Profits and Duties of my whole Lands, Lordship and Barony of ——— and whole other Lands and Heretages belonging to me of this instant Crompt, and the Tear of God ——— with all Rests of whatsoever preceeding Tears: And likewise, of all Years and Terms to come, during the space after-mentioned: As also, all and whatsoever Sums of Money Addebted, or that shall happen to be Addebted to me within this Kingdom, both principal Sums, Profits and Penalties thereof, from my Debtors, and from the Tennents and Possessors of the Lands and others foresaid, and from my Factors and Chamberlains, and all others whom it effeirs; and to Call and Pursue therefore as accords of the Law, either in her own Name, or mine, as she shall think expedient, and to give Acquittances and Renounciations thereupon, or if need be, Assignations

nations, Translations, Dispositions, or other Rights thereof, which shall be as sufficient to the Receivers, as if I had made and subscribed the same my self. And to apply the first and readiest of the Introumissions, next after the Maintenance of her self and our Family; for the Payment of Chamberlains and Servants Fies, and what Minister Stipends, or Feu-Duties, or School-Masters Fies, and incident publick burdens, are or shall be Due, furth of my Estate. And in the next place, for payment of the by-gone and current Annualrents of the whole Debts, due by me, and what shall be over, for the Payment of Principal Sums, Resting by me to my Creditors. As also, to Intent, Prosecute and follow furth Actions and Proceses of Reduction, Improbation, Declarator, Actions of Relief, or for payment of whatsoever Debts due to me, and to prosecute and follow furth the same. And likewise, to Compone and Agree thereanent, and to Make and Constitute, Place and Displace at her pleasure, Procurators, Advocats &c. As in the former Style. And to Constitute Bail-lies and Chamberlains, of my whole Lands and Barony, and to give them such allowance as she shall think reasonable, and to Receive and Enter the Heirs of all my Vassals to all Lands, and others, wherein their Predecessors have died or shall happen to die, last Vest and Seased as of Fie, holden of me, by Precepts of Clare Constat, or Precepts upon retour, as she shall think expedient.

dient. And likewise, to receive all Resignations to be made by any of my Vassals of my Lands and Heretages holden of me, in favours of whatsoever person or persons, and to grant Insestments thereupon. And sicklike, to confirm all Charters made, or to be made by any of my Vassals, to whatsoever person or persons in Liferent, Conjunct-Fee, Heretably, or otherwise, of whatsoever Lands, or others, holden of me, and to grant Charters upon Apprysings, Adjudications deduced, or to be deduced, at the instance of whatsoever person or persons, of whatsoever Lands, Heretages, or others holden of me, without alteration, always of the former holdings. And in like manner, to Grant and Dispose Presentations, Gifts of Ward, Non-entries, Marriages, Liferent Escheats, and other Casualties of my said Vassals fallen, or that shall happen to fall in my hands, and to Make and Subscribe with her Hand, and cause Seal with my Seal, all Presentations, Precepts of Seisin, Charters of Confirmation or Resignation, Charters upon Adjudications or Comprysings, Gifts of Ward, Non-entry and Marriage, Liferent Escheats, and other Securities requisit to the effect above-specified, and to set down and modify the Compositions, to be payed to me for the same: And to set Tacks of my whole Land and Possessions for the Old-duties, or for the greatest Duties that can be had for the time: And to Build, Beat and Repair my Manour Places, Houses, Buildings, Yards, Orchyards, Woods,

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Woods, Parks and Dykes thereof; and to make such policy about the same as she shall think expedient; and to Deburse of my own Money all Charges requisite concerning the Premises; And to grant Bonds Heretable or Moveable, or Contracts of Wadset for security of the same, containing Obligements to Infeft, Procuratories of Resignation, Assignment to the Mails and Duties, and to the Writs and Evidents, and Right to the Teinds and Annuities thereof, and Clause of absolute Warrantice, upon me, my Heirs and Executors; and to bind and oblige me and them to repay the Sums to be borrowed, and for which the said securities shall be granted, at such Terms and Times, and under such penalties as she shall agree with the Parties, and that as well for Debts that are already due by me, whether Principals or Annualrents, as for what she shall hereafter borrow for my use: And generally to do all other things requisite and necessary thereanent, which to the Office of Factory and Commission in such Cases, by the Law and Custom of this Kingdom, is known to appertain, and which I might do myself, if I were Personally present, promising to hold firm and stable, all and whatsoever things that my said Spouse does or causes to be done in the Premises, without Revocation; Providing always, that all heretable and Moveable Bonds, Wadsets, Discharges of principal Sums contained in Bonds, Assignations, Translations, Dispositions, Renoun-

ciations,

ciations, Letters of Bailliary and Chamberlanry, Charters, Presentations, Precepts, Gifts of Ward, Escheats, Non-entries, Disclamations, and other Casualties falling to me, as Superior, Tacks, Warnings of Tennents, and the clearing of Accompts with Chamberlains, to be granted by my said Spouse, shall be made with advice and consent in write of my Friends after-named; viz ———— or any two of them, the said ———— being always one, and failzieing of him the said ———— and failzieing of him by death or absence, the consent of the major part of the remaining Friends; and as to all other matters, except these immediatly above-mentioned, she is hereby warranted and allowed to do the same by her self alone: Providing always, that my said Spouse shall be holden and obliged to make just Compt, Reckoning and Payment to me, or my Heirs or Assignneys (seclud- ing my Executors) of her Intromissions by ver- tue of this Factory and Commission, and that Yearly or oftner, either to me or my foresaid, or to my Friends above-named, or their Quo- rum, as she shall be desired; and this Factory to endure and continue for this instant Crop, and and Tear of God ———— and for the space of ———— Years, and thereafter, till it be recalled by me in Writ. Registration for preservation on- ly.

A Factory, Chamberlanry and Bailliary, granted by a Landed-Gentleman, Infeft with power to hold Courts, was thus, ————

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Giving &c. to him full Power, Warrant and Commission for me, and in my Name, to ask, crave, receive, intromet with, and uplift the whole Victual and Money-Rent, due and payable to me, for the Crop——by the Tennents of my Lands and Barony of —— and to grant Discharges to the Tennents upon the receipt thereof, which shall be as sufficient to the Receivers, as if I had subscribed and delivered the same myself, and with power to him to sell the Firms as he shall from time to time be ordered by me, to be delivered at Edinburgh, or at Leith, or at any place of the like distance from the respective Lands, I being always satisfied with the price and security, before the Bargain be closed: And generally with power to the said B. for the ingathering and recovering the said Rents, &c. that I might do myself, if I were Personally present, promising to hold firm and stable, &c. And further, wit ye me, to have nominated and constitute, as I &c. the said B. during the continuance of this Factory, my very lawful and irrevocable Bailie, to the effect after-specified, of my Lands and Barony of —— and other Lands above-specified belonging to me, lying within the fore-said Paroches; Giving, granting, and committing to him, my very full Power, special Mandat, express Bidding, and Charge for me, and in my Name, to set, begin, affix, fence, hold, and continue Baron-Court, or Courts, as oft as

he shall think expedient, and that upon the ground of any part of the Lands and others above-rehearsed, and therein to administer Justice in all Cases to be intended before him, conform to the Laws and Practique of this Realm, and to cause Suites be called, amerciat absents, punish Transgressors, and to uplift the Fines and Amerciaments of the foresaid Courts, and if need be, to cause poind and destrinzie for the same, and generally all and sundry other things in the Premisses to do, use and exerce, which to the Office of Bailliary &c. sicklike &c. as if I were personally present, promising to hold firm &c. And I do declare, that I allow to the said B. the fines and amerciaments of Courts, that shall be holden by himself for his pains and travel in exercising the foresaid Office of Bailliary, which is to continue and endure for the space of one Year, after the date hereof, and longer, except I shall think fit to revoke the same: It is also hereby declared, that the Inclosure in ——— which was sometime possesst by ——— and lately by the Tacks-men of my Estate, is not to belong to said B. but he is to be Comptable for the Rent thereof to me; Providing always, that the said B. his Heirs and Executors, be holden and obliged to make just Compt, Reckoning, and Payment to me, of his whole Intromissions with my Estate, for the foresaid Year of ——— and thereafter during the continuance of this Factory, and Yearly or oftner, as he shall be required; As also, that
he

he be holden to use Diligence for recovery of my said Rents; deducing and allowing to the said B. the Sum of 400 Merks Scots of Fee, for his being Factor, and going and receiving the Victual and Money-rent, and in selling and delivering the same out again, and in satisfaction of his Trouble and Expences in doing thereof, allowing also to him, that House in _____ presently posselt by himself and his Family, with Grass for a Cow and a Horse, to be pastured with my own in Summer, and to have Fother for them in the Winter, conform to a particular Bond granted by the said B. to me, of the date of these presents: Reserving power to me notwithstanding of the Premisses, to modifie such Amerciaments of Court and Unlaws, as I shall think exorbitant at my pleasure. Registrati-
on.

Factories may not only be granted to uplift Money, &c. but also for other ends and uses, according to the exigent of the Parties, as to sell Lands; and it is thus, With power &c. to meet, treat, and agree with any Person or Persons, that are willing to buy the Lands of C. and Woods growing on the same, and to consent for me, and in my Name, to any Vendition of the said Lands and Woods, for payment of my Creditors, that have the best and most effectual Rights on the said Lands, and to subscribe any Disposition for me, and in my Name, of the said Lands and Woods, in
fa-

favours of any Person that shall give most for them, and also to consent to any Decreet of Sale of the same, that shall be thought necessary and for the satisfaction and payment of his Creditors: With full power to the said B. Factor foresaid, without my presence or consent, to do in the said Affair, as amply as if I were present, and that without any other consent, than this present Commission, which I hereby declare to be a sufficient security to any Person whatsoever, who shall happen to buy the said Lands and Woods, &c.

Factories are granted, with power to perform the Constituent's part of a Decreet Arbitral, in this manner ——— And because there was a Decreet Arbitral pronounced by ——— upon ——— determining some differences that were betwixt me and ——— and there being several parts of the said Decreet Arbitral not fulfilled by me, Therefore with power to the said B. with consent of my Curators above-mentioned, consenters hereto, to fulfill the foresaid Decreet Arbitral in every Article thereof, that is appointed to be done by me, and to grant what Writs, Rights and Warrantice, upon me and my Heirs, as are necessary in order thereunto; Providing always, That my said Sisters fulfil in my favours, their parts of the same Decreet.

Factories may likewise contain a power, to call Tutors to Compt, thus ——— And in like manner, with power to the said B. to call and pursue my Tutors to Compt and Reckoning

for their Intromissions, and management of my Estate, during the time of my Tutor, and to obtain Decrees, and to use all manner of legal Diligence, both concerning that Matter, and the Exhibition and delivery of the Charters, Writs, Rights and Evidents of my Estate, Personal and Real.

Because People living in North-Britain, may have Business in the South parts of this Island, or in *America* to be Negotiated by a Factory: I give you the Form of a Letter of Attorney, as used in these Parts. Know all Men, by these presents, That I A. have made, ordained, constituted and appointed, as I make, ordain, constitute, and appoint B. my true and lawful Attorney in the Province of East-New-Jersey in America, and in the said Province for me, and in my name, and for my self, to ask, demand, call for, and require all Lands, Rents, Goods, or any manner of Stock whatsoever, belonging to me the said A. in the said Province; with such Families and Servants, as the said B. shall cause transport from this Kingdom of Scotland, or elsewhere to the said Province, on my account, or as hereafter shall be sent or transported thither upon my account; Giving, and also granting power to my said Attorney, to sell, let, or dispose of any of my Lands whatsoever, within the limits of any Town or City in the said Province, or else where as the said B. shall think fit; empowering him hereby

hereby sufficiently to make such Rights and Titles to any Person whatsoever, to whom he shall let, or otherways dispoſe of any of my Land, either in Town, City, or Country, within the ſoſaid Province, as may be good, valid and ſufficient, to all intents and purpoſes, as my ſelf could do, if I were there Perſonally preſent: And alſo, to do, perform and execute, all and every other lawful and reaſonable Acts and Things, as ſhall be needful, both for obtaining, taking up, or procuring any of my Lands, Rents, Goods, or Stock aforeſaid, or for Settling, Planting, or Improving the ſame, or for Selling, Letting, or otherways diſpoſing thereof, upon ſuch Terms and Conditions as the ſaid ——— ſhall think fit: Giving, and by theſe preſents granting, unto my ſaid Atturney, my full and abſolute power in the Premiſſes: Ratifying and holding firm, all and whatſoever my ſaid Atturney ſhall lawfully do, or cauſe to be done, by vertue of theſe preſents. In witneſs whereof I have herento ſet my Hand and Seal the ——— day of ——— The firſt Year of the Reign of King George, over Great-Britain, France and Ireland, &c. Anno Domini 1715.

Of Ratifications.

WHen Deeds are granted by Perſons, who upon account of their State and Condition in Civil Society, are not

effectually Tyed and legally Obligated, by the Writings which they subscribe. In order to make these Acts and Obligations, or Conveyances valid, Ratification when they arrive at a legal Capacity is necessary: in forming whereof the Writer is to consider the State and Condition of the Granter; if, or not, they be lyable to the same Exceptions, as at the time the original Deed was made. And next, the Nature of the Obligation or Deed, that is about to be Ratified; and wherein it was defective.

The Deeds, which need Ratification, are such as are granted by Minors, without consent of their Curators, or when the Curators consent to a Deed whereby the Minors are Lesed, or which are without the bounds of their Administration: As Alienation of Lands without Decreet of the Lords of Session. 2^{do}. Deeds by a Factor, where the Warrant to do these is wanting or doubtful. 3^{io}. Donations, betwixt Man and Wife, must be Ratified by the Granter, after dissolution of Marriage. Now, any thing that is beyond a rational Liferent-provision, in the case that there was no Contract of Marriage, or what is over and above the Provisions and Obligations in the original Contract Matrimonial, are in Law esteemed to be Donations betwixt Man and Wife, and Revokable. Not only so, but
Deeds

Deeds done by the Wife, with consent of the Husband, in favours of third Parties, are lyable to Exceptions; and in some measure presumed to be done, more out of obedience, respect, and reverence to the Husband, than out of free-will: So that upon her proving, that she was coacted and compelled to sign the Writ, and that she did it of purpose to keep Peace in the Family, and not of Free-will: The same is Reducible. As likeways, to remove all presumption of Force and Fear, third Parties are in use to cause Women Ratify their Deeds, in presence of a Judge, while their Husbands are removed from them. *4to.* Deeds granted by Persons, who are under Coercion or Constraint, in favours of those who detain them, or who out of fear may concuss them to do these Deeds, must be Ratified when the Granters are out of the state of Force, Fear, or Concussion; otherways the same are Revokeable. As for Example, Obligations or Conveyances, by Persons under Caption, or Incarcerate, in favours of the Debitor, in Matters extrinsick to the ground of the Caption, are in Law presumed to be made *metu carceris*. And gratuitous or inadequate Deeds, done by a Person suspected or tainted of any Crime, in favours of a Minister of State, in whose power it is to prosecute or let fall the Accusation, are Revokable upon the head of Concussion. *5to.*

Persons

Persons in the anguish and pain of Sickness, and labouring under other corporal Infirmity, whereby they become easy and exposed to the importunity of designing People; if in that State, they grant any gratuitous Right or Obligation, the same is lyable to Exceptions, and should be Ratified by the Granter, when recovered into *liege pou-
stic.*

In this Ratification, you briefly narrate the Write to be Ratified, and then subsume upon the Cause or Motive of granting the Ratification, which is various, according to the State and Condition of the Granter, or defect in the Writ; after which follow the Stile of the Ratification, the words whereof are, *Ratify, Confirm and Approve*, or more briefly without Narrative or Subsumption, you may proceed directly to the Clause of Ratification, as in this following Form,

Of a Ratification of a Contract of Marriage by the Husband, when come to the Years of Majority.

I A. *By these presents, Ratify, Confirm and Approve, the Contract Matrimonial of the date ———— past, and persited betwixt me on the one part, and B. now my Spouse, eldest Lawful Daughter to ———— with the special advice and consent of the said ———— on the other part;*

part; in the whole Heads, Clauses, Articles, Obligements, Provisions and Conditions therein-exprest: And I will and grant, and for me, my Heirs and Successors, declare and ordain, that this Ratification, and Generality thereof is, and shall be as valid and sufficient to all intents and purposes, as if the same Contract were word by word insert and ingrossed herein; Whereanent, and concerning all defects and imperfections, that may be objected against the validity thereof, and this Confirmation of the same I have dispensed, and by these presents dispense for ever: And I bind and oblige me, my Heirs Successors, and Executors, to warrant this Ratification to be good and sufficient to the said B. my Spouse, and to all others concerned, at all hands, and against all deadly, as Law will. And I consent, that Execution shall pass upon the foresaid Contract, and this Ratification at the Instance of the said ——— and ——— or such of them as shall be alive for the time, and failzieing of them by decease, at the instance of their Heirs, against me for implement of the foresaid Contract; and this Ratification thereof in favours of the said B. and the Heirs or Children procreat, or to be procreated betwixt us. Registration.

OF

Of Revocations.

IN these Cases where Ratification is need-
ful, to make the Right valid in Law,
Revocations are required to make
such Deeds of no effect ; and that more e-
specially, because taciturnity and silence in
a space of Time, hath the effect of a Con-
sent and tacite Ratification : As when a
Minor, who has no Curators, grants in Mi-
nority a Deed that is quarrellable, which
if not Revoked by himself *infra annos utiles*,
or by his Heir, is valid in Law. Whereas
on the other hand, when a Minor who has
Curators, does any Deed without their
Consent the same is *ipso jure* Null, and needs
not be Revoked. And in like manner, Do-
nations *inter virum & uxorem morte confir-*
mantur : And the same may be said of other
compulsitory Deeds, where force, fear,
fraud or Infirmary, was the Cause, or gave
occasion to the Contract or Obligation :
All which Deeds ought to be expressly Re-
voked by the Granter in his Lifetime. So
that except the Granter immediatly dyed
after the signing of such Deeds, his Heir
after a certain space of Time or Years, hath
not the privilege of Revocking. These Re-
vocations, are either Tacite or Express :
The Tacite, are by doing Deeds contrary

to the former ; and seeing both cannot subsist, *posteriora derogant prioribus*, or by intending Summons of Reduction, of these anterior Deeds. The expresse Revocations, are by a formal Writing, and Letter of Revocation sign'd. Revocations in Writing are absolutely necessary, when a Major makes a Bond or Conveyance, under the condition, that it shall only be Valid and Effectual, in case the same be not Revoked by him in writing under his hand, at any time in his Life, *ac etiam in articulo mortis*.

The Narrative, (where the Deed to be Revoked is briefly mentioned) with the Subsumption and Cause of making the Revocation, (which is various according to the Circumstances of Parties, and Quality of the Right) being premised, the Clause of Revocation followeth ; the words whereof are, *Revoke, Cass, Annul, Retreat and Rescind* ; tho' most commonly Writers make use of the word *Revoke* alone : As in the following Examples.

Revocation of Deeds in Minority by the Granter, after his perfect Age of 21 Years compleat.

BE it known &c. Me A. being now past
my lawful Age of 21 Years compleat,
S f For-

Forasmuch as, I during my *Minority* was moved and induced to subscrib the *Contracts, Bonds* and others, after-specified, to wit ——— (here mention these briefly) together with several other *Contracts, Bonds, Obligations, and other Writs*, in favours of sundry other Persons; And seeing the same was done by me, to my *Enorm Hurt and Lesion*, and without any necessary Cause done to me for the making and granting thereof, and that by the *Law and Practique* of this Nation, I may now be Reponed and Restored in integrum against the same. Therefore, wit ye me, now being past my said Age of 21 Years compleat, and within the quadriennium utile, to have Revoked Likewise, I by these presents Revoke the whole *Contracts, Bonds and other Writs*, specially and generally above-mentioned subscribed by me in my *Minority*, as said is, either without or with the consent of my Curators for the time, with all that has followed, or may follow thereupon; and Protest that I may be Reponed and Restored in integrum against the making and subscribing thereof; and that it may be Leisom to me, to call for, and recover the Money payed by me by vertue of the same; and for repetition of any Damage or Interest sustained there-through: Conform to the foresaid Privilege of the Law, introduced in favours of Minors. Registrati-
on.

Re-

Revocation by a Widow.

BE it known &c. *Me A. Relict of the deceast*
B. Considering that not only by the Civil-
Law, but also by the Law and Practique
of this Nation, all Deeds done by Married Wo-
men, at the earnest desire of their Husbands
stante matrimonio, to their own enorme Hurt
and Lesion, and without any necessar Cause, not
being Ratified by the foresaid Wives judicially,
may be Revoked by them after the death of their
Husbands, as being done through the fear and
reverence they had to their Husbands, and for
entertaining of Love and Aimity betwixt them,
and consequently may be reduced and annulled
after the Revocation thereof; And considering
that there was a Bond made &c. (here narrate
the Writ to be Revoked) and that there were
sundry other Deeds done by me with consent of
my said deceast Husband, and for entertaining
of Love betwixt us, and without any necessar
Cause, and to my Enorme Hurt and Lesion,
which were never Ratified by me Judicially.
Therefore, and to the effect I may be restored
against the foresaid Deeds, and that I may ob-
tain the same, with all that has followed, or may
follow thereupon, Reduced and Annulled totally,
at least in so far as the same was done to my
prejudice, wit ye me, to have Revoked; Like-
as, I by these presents Revoke the Facts and
Deeds,

S f 2

Deeds, particularly and generally above-mentioned done by me, with consent of my said deceased Husband, or by us both with one consent, in favours of the said deceased C. or of whatsoever Person or Persons : And I protest, that I may be restored and reponed in intergrum against the same, conform to the common Laws and Practique of this Nation. Registration.

Of Contracts, or mutual Obligations and Conveyances, Bipartite, Tripartite, &c.

ALL written Obligations and Conveyances, are founded on exprefs Agreements, enter'd into by two or more Persons, in Law capable ; and they are either single, or double and mutual. By single Obligations and Conveyances, is meant, where there is only one Party binding himself, or conveying a Right to the other, who on the other hand has instantly performed his Part of the Agreement ; and on that account has got an Acquittance. As for Example ; In a Bond of borrowed Money, the Borrower acknowledges the Receipt of the Money, and Discharges the Lender thereof. And in an Assignment, the Cedent, for Causes either presently or formerly, fulfilled to him, Assigns and Disposes

pones to the Assigney and the like, &c. as is clear from the Cases already set down and treated of. By double and mutual Obligations and Conveyances, we understand a Writing wherein the Obligations of both Parties, and their mutual Conveyances are exprest and set down, which is occasioned, because the mutual Prestation of Parties is drawn into a future tract of Time, so that neither of the Parties can, or do instantly fulfill their Part of the Bargain: And by reason of the Condition of the Agreement, that the one is not to fulfil his Obligation, till the other implement his Part; there must be a Writing formed expressing this Bargain, that Parties be not disappointed; as will appear from the Cases and Examples that follow; and these in our Law, are called Contracts, of which there are two or more Copies signed and delivered, one to each party. The Words commonly made use of in Contracts are these. *It is Contracted, Agreed, and finally ended, betwixt the Parties following; to wit, A. on the one part, and B. on the other part. Or thus, A. and B. on the one and other parts, in manner following; That is to say, the said A. hath sold &c. for which Cause, and on the other part the said B. hath bound and obliged, &c. to pay, &c. Or between two and one, Or between two and two, thus A. and B. for themselves conjunctly and severally on the one part;*
and

and C. and D. &c. on the other part &c. Or between three and three, A. B. and C. on the one part, and D. E. and F. on the other part. These are called Bipartite Contracts; for how many Persons soever there be on a side, yet there are but two Parties Contracting.

There may be also Tripartite, or Quadripartite Contracts, which have three or four Parties Contracting together; and in general, there may be as many Parts, as the Subject of the Contract, and Design of the Parties make needful or convenient, which by sundry Examples in this present Treatise will appear.

The Contracts we purpose at present to treat of, are Indentures, Contracts concerning Movables; Contracts of Marriage, Tacks and Submissions.

The word Indentures, signifies a Writing whereof there are two Copies indented, or cut one of them into another, containing Heads of a Contract or Agreement, betwixt two or more; and generally of old, Contracts, what Nature soever they were of, were Indented on the top, answerable to another part in Writing, which had the same Contents. But at present the word Indenture, signifies only a Contract betwixt a Master and one that is to be bound Prentice to him: Because at this time no other

Writs

Writs but these are in use to be Indented: I speak of the Law of Indentures more fully in another Treatise.

The Form of Indentures properly so called are various, according to the Nature of the Calling which the Apprentice is to Learn: So that an Indenture betwixt a Merchant and his Prentice, which is written by the Clerk of the Dean of Guild Court, differs from the Indentures betwixt the Masters of the several Crafts and Incorporations, and their Prentices; as of Surgeons, Wrights, Masons, Smiths, &c. which again differ among themselves; and these Indentures are commonly written by the Clerk of the Incorporation. Here I shall only give an Indenture betwixt a Writer to the Signet and his Apprentice, which will give an Idea of other Indentures.

AT Edinburgh the 1st of June 1715, It is appointed, agreed, and finally ended, betwixt A. Writer to his Majesty's Signet, on the one part, and B. with advice and consent of C. as Cautioner for his said Son, and taking burden upon him for the said B. on the other part, in manner following; That is to say, the said B. with consent of his said Cautioner, becomes Prentice and Servant to the said A. in his Vocation of Writing to the Signet, for the space of three Years next after his Entry, which is hereby declared to begin at the date hereof. Likeas,
the

the said B. with consent foresaid, binds and obliges him during that space, leilly and truly to attend his Masters Service at all times, both by Night and by Day, and not to absent himself from the same, during the space of his Apprentiship, without his Masters leave asked and given, under the pain of 40 lib. Scots, to be payed by the Cautioner to the said A. in case of failzie : And that he shall not willingly hear, nor see his Masters Skaith, in his Name or Goods, but shall hinder and impede the same to his power, and timeously acquaint his Master therewith, and that he shall not under the said penalty reveal or divulge any Writs or Affairs, wherewith he shall be entrusted by his said Master. And also the said A. binds and obliges him to Intrust the said B. in the foresaid Vocation of Writing, during the space above-rehearsed, and to conceal no part thereof, so far as his capacity is able to receive. For the which cause, the said C. has presently made payment to the said A. of the Sum of 300 Merks Scots Money, in name of Prentice-Fee with the said B. whereof the said A. grants the Receipt, and Exoners and Discharges them, their Heirs and Executors of the same. And if it shall happen the said B. to defile his Body with Whoredom during the time of his Apprentiship, in that case, and immediatly thereafter, it shall be Leisom for the said A. to put him from his Company and Service. And likeways, the said B. and his said Cautioner, bind and oblige them conjunctly
and

and severally, their Heirs and Executors, to
 refund to the said A. his Heirs and Assignes,
 all Damage, Expence and Interest, he shall
 happen to incurr through the default of the said
 B. or through his not dutyful attending his Ma-
 sters Service, or through any omission or wrong
 that shall be omitted or done by him. And fur-
 ther, the said B. binds and obliges him and
 his foresaid, to warrant, &c. the said C. his
 Cautioner above-named, of his said Cautionry,
 and of all Cost, &c. Registration.

Contract of Communication of Goods,
 Moveable and Heretable, betwixt the
 Heir and Executor.

AT — the — Day of — Years,
 It is Agreed betwixt A. on the one part,
 and B. his Sister on the other part, as
 follows; To wit, Forasmuch as, albeit the said
 A. be nearest and lawful Heir to the deceased
 C. their Brother-German, yet in regard he
 is willing to divide and communicate with the
 said B. his Sister, any benefit that he can have
 by the foresaid Heirship, and the Executry and
 whole Moveables, are likeways to be equally di-
 vided betwixt them. Therefore the said A.
 now as if he were already Served and Retoured
 Heir to the said C. his Brother, and then as
 now, by these Presents, Assigns and Dispones to
 the said B. his Sister, her Heirs, Executors

T t

or

or Assignees, the just and equal half of all heretable Debts, and Heirship that belonged to the said C. the time of his decease, Dispensing with the generality, and admitting the same to be as valid, as if every particular of the said half were specially mentioned and exprest; Reserving always the other equal half of the said heretable Debts, and Heirship to himself, And on the other part, the said B. Assignes and Dispones to the said A. his Heirs, Executors or Assignees, all Right whatsoever, that she as Executor or nearest of Kin to the said C. can have to the equal half of the Moveable Debts, and Sums of Money, that were due, and pertained to him at the time of his Death, and that as well of these that are particularly mentioned in his Confirmed Testament, as of what may be omitted furth thereof; Dispensing likewise with the generality, &c. (as above) Reserving to the said B. her self, the other just and equal half of the said Executry, and Moveables: And both Parties do oblige themselves, their Heirs, Successors and Executors, to grant, subscribe, and deliver to others, such particular Rights and Assignations, as shall be requisite for extending this Agreement whensoever they shall be desired, with warrandice from their own respective Facts and Deeds. And likewise they oblige themselves and their foresaid, hinc inde to others, to bear equal burden, and to relieve one another of any prejudice may be sustained by
the

the Representing the said C. as Heir or Executor, each of them for their own equal halves thereof.

A Contract and Agreement betwixt the Heir, Executor, and Relict of a person Deceas'd, concerning the Partition and Settlement of his Fortune; which consisted of Moveable Sums lent out upon Bond for Annualrent, was Thus. At ——— It is agreed betwixt A. Heir, and one of the two Executors to the Deceas'd W. his Brother-german, and B. Sister-german, and the other Executor Confirm'd to the said W. on the one part; and C. Relict of the said W. on the other part as follows, to wit. That the Bonds after-mentioned, which belonged to the said W. shall all of them be presently deliver'd to the Register by the said C. viz. (here the Bonds were briefly enumerated) And that there shall be two Extracts thereof taken out of the Register, and one of the said Extracts of each Bond shall be delivered to the said A. and B. and another Extract thereof to the said C. As also, the said C. Binds and Obliges her to deliver to them, a Bond dated, &c. (here several writs, which were to be delivered, were set down) And it is agreed betwixt the said parties; That the Expence of the Registration and Extracts of the foresaid Bonds, shall be payed out of the first and readiest of the Annualrents of the principal Sums above-mentioned that were Resting to the deceased W. at the Term of Lambmas, immediatly preceed-

ing his Death. And in like manner, the said A. and B. as principal ——— as Cautioners, and Soverties for and with them, Bind and Oblige themselves Conjunctly and Severally both Principals and Cautioners, their Heirs, Executors and Successors: That they shall not Uplift any of the principal Sums above mentioned, that were due to the Defunct at the time of his Death, nor any of the Annualrents thereof that were Resting at the Lambmasse preceeding the same, without consent of the said C. Life-rentrix thereof. And that they shall immediately re-employ the same when Uplifted, likewise with her consent, and take the Securities thereof to her in Liferent; and to the said A. and B. their Heirs, Executors or Assignees in Fee: And how oft the same or any part thereof shall happen to be Uplifted, The Principals and Cautioners, Bind and Oblige them Conjunctly and Severally, and their foresaids, immediately to re-employ the same of new with consent, and to the effect before-mentioned. And moreover, it is agreed betwixt the said Parties, That the Debts which were due by the Defunct, and his Funeral Expences, and others contained in a particular List thereof, subscribed by them both, with the Expences debursed in the Confirmation of his Testament and the Sum of ——— hereby allowed to the said C. for her Mournings, and for the Maintainance of her self and Family, from the time of her Husbands Death, till the
Term

Term of Candlemas 1715 shall be payed out of the bygone Annualrents, that were due to the Defunct preceeding Lambmas 1714, and the whole remainder of the said Sums, both Principals and Annualrents, after deduction of what is hereby appointed to be payed out of them, is to be lent out, and the Securities thereof to be taken to her in Liferent, for the implement of her Contract of Marriage, and subsequent Provisions granted to her by her Husband, and to them equally in Fee, as is before express'd: And if any other Debts resting to the Defunct shall be recovered, they shall be applyed and imployed accordingly. And for obviating and preventing all differences that may fall out betwixt the said Parties; It is agreed, that the said C. is to have the Life-rent from, and after the Term of Lambmas 1714, of all the Money belonging to her Husband at the time of his Death, and the Fee of the whole is to fall equally to the said A. and B. and their foresaid, and she is to claim no part of the Fee thereof, by vertue of any Clause contained in her Contract of Marriage, or by vertue of any subsequent Right made to her by her Husband: And both Parties, and the said Cautioners for A. and B. Bind and Oblige them hinc inde to others, to Observe, Perform and Fulfill the Premisses each of them to others, according as they stand Bound hereby. And the Party Failzier to pay to the other Party, the Sum of——Scots Money of Penalty, by and attour performance of the Premisses. Registration. Ac-

According to the various occasions of Humane Society, the Designs and Undertakings of Men, which cannot be defin'd, there may be as many Contracts, in which nothing more is required than in proper words of Stile, distinctly to set down in good order the meaning of the Parties: In these forms of Writings, there are Obligations to perform a Deed, work a Work, or pay a Sum, as the Hire of the Workman, or Reward of the Undertaker, where the obligatory words of Style are used. And in Sales the words in Dispositions, Assignations &c. are made use of, for knowing which Formes, the Student may make Collections of Writs of that kind, to instruct himself in the Art of making profitable Bargains, according to the various occurrences in Humane Life; For Examples sake, I shall give the draughts of a Contract of Victual, a Contract of Sale of a Wood, from which one may observe the Cautions to be used in making such sort of Bargains: And when a Gentleman or Student meets with a Contract that expresses a well made Bargain, where the Parties notic'd the minutest Circumstances that might occur, and obviated all possible inconveniencies; I'd recommend to him, to post that Writing into his Book, to serve him on the like occasions, which he may do in the manner I shall give him a President for.

A Contract of Victual, is in this Form.

AT ——— It is agreed betwixt A. on the one part. And B. and C. on the other part in manner following, That is to say, The said A. has Sold and Disponed, and by these presentt Sells and Dispones, and obliges himself his Heirs and Successors, to deliver to the said B. and C. equally betwixt them, their Heirs, Executors or Assigneys, the number and quantity of 700 Bolls of Bear, of the said A. his Farme-bear, of D. E. and F. for the Cropt and Year of God 1715, being sufficient Stuff; Which Victual the said A. Binds and Obliges him, to cause his Tennents to carry, in their own Sacks, upon their own Horses, and upon their own Charges, to the said B. and C. or any person having Warrant from them, or either of them, to Edinburgh, Leith, or the Water of Leith, or any place of the like distances. And that betwixt the date hereof, and the ——— day of ——— next to come, without longer delay; with the Sum of ——— Scots Money, for every undelivered Boll thereof. And on the other part, the said B. and C. bind and oblige themselves, each of them for their own just and equal parts, (or conjunctly and severally, if it be so agreed) their Heirs, &c. to content and pay to the said A. or any having his

his order, the Sum of Ten shillings sterline Money for each Boll of the said Ferm-bear that shall be delivered, or offered to be delivered in manner above-specified, and that at the Terms and by the Proportions following, viz. Of the one just equal third part thereof at the Feast of Pasch next to come: And of another just and equal third part of the same at Whitsunday thereafter: And of the last third part in compleat payment of the said Bargain, at the Feast of Lambmas in the instant Year 1715. without longer delay: With the Sum of Six pounds Money foresaid of liquidate Expence for each Terms failzie, and with the Annualrent of the said principal Sum, so long as the same shall happen to remain unpaid after the respective Terms of payment above-written; without prejudice of suing Execution hereupon at the said respective Terms of Payment, for what shall be then payable, or any time thereafter, without Requisition.

A Contract of Vendition of Timber, is in this, or the like Form.

A. Sells and Dispones to and in favours of B. his Heirs or Assignes, the whole growing Timber, both Oak, Ashes, Elms and other Timber, growing within the said A. his Woods and Dykes of ——— together with the whole growing Timber upon the Bounds of the said Town, except

rept what was growing within the Tennents Yards
 (and the generality of this Clause was to be;
 conform to a particular Bounding to have
 been subscribed in a Paper per se by both
 Parties) with the Bark and Bulk thereof, lying
 within the Parochin of ——— and Sheriffdom
 of ——— with power to him to Peil, Cut, Lead,
 and away take, the said whole growing Timber,
 Bark, and Bough thereof, within the precinct
 and bounds of the said two Woods, sell, use, and
 dispose upon the same at their pleasure, and with
 free ish and entry, for selling, cutting, and
 away-taking of the same Timber and Bark, for
 the space of five Years after their entry to the
 cutting of the same, which is declared to have
 begun to the cutting of Oak at the fifteenth
 day of April last, and to have continued in the
 cutting of Oak Yearly, to the 10th of August;
 and to Cut any other Timber in the said Woods,
 at any time of the Year, they always reserving
 the Stock of the Wood in so far as they were able;
 and so furth to continue in cutting the said
 Wood till the said five Years should be out-run
 and bygone. After B's part and obligation
 to pay a Price, there was added, And the
 said B. obliges himself and his foresaid, to suf-
 ficiently cause Cut and Peil the several Hags
 of the said Woods Yearly, as the same shall be
 Cut; the said A. causing alwayes make the
 Wood-dykes to be bigged upon his own Expences,
 and also furnishing to him the Carriages of 80
 Horses Yearly to Stirling or Perth, for trans-
 porting

porting of the Bark, each Horse carrying always six Firlots Bark, under the penalty of 20 sh. for each deficient Horse: As also the said A. obliges him and his foresaid, not to Cut any other Timber in that Paroch during the foresaid space, excepting what is for his own use allenarly; And in case of War, Famine, or Pestilence, it was specially provided by both Parties, that then and in that case, the Tears for Cutting, and the Terms of Payment corresponding, were prolonged and suspended, according and conform to the time and years, they should happen thereby to be stoped and impeded. In this Contract, beside the Penalty, in not Termly Payment of the price, there was a mutual one of 200 Merks, to be payed by the Failzier to the observer.

Of Contracts of Marriage.

MArriage, is a Conjunction of Man and Woman, with purpose to live inseparably together till death.

From this conjugal Society, arises the Communion of Moveable Goods betwixt Man and Wife, the Administration whereof belongs to the Husband, which reaches even to Alienation, for doing whereof he needs not a formal written Assignment: For by Law, Marriage is interpreted to be a legal Disposition, by the Wife to the
Hus-

Husband, of all her Moveable Estate, in which nevertheless, Sums of Money bearing Annualrent, are not comprehended. On the other hand, the Wife's Right to her Husband's moveable Estate is during their mutual Lifetime dormant ; but in the case of her survivance, the Law gives her the half of her Husband's Moveables, free, after payment of Debt, in case there is no Children, and in case there be any, she gets only a third. I speak not here of the Right, which the Husband has by Law, in the Heretable Estate of his Wife, neither of the Interest the Wife obtains in her Husband's real Fortunes, in case of her survivance ; because we shall have occasion to Discourse thereof more properly when we Treat of real Rights. In general our Student may observe, that the Legislators in the most Civiliz'd places of the World, have Regulated this conjugal Society, in what concerns the several Rights and Estate of the Married Couple, and have provided that the Fortune belonging to the Woman, should contribute towards the supporting the Charges of a Married state ; and also that after the Husband's decease, the Woman be not left destitute, but be made partaker of a share of the Husband's Means in such measure, as is necessary to make her live comfortably ; And this legal Provision only takes place, when there's no Contract or

Agreement betwixt the Parties, by which the determination of Law may be altered; for in this case, as in sundry others, *provisio hominis tollit provisionem legis.*

This Contract expresses the Conditions of the Marriage, for now a Days, Interest has a greater hand in making Marriages, than Love founded on a virtuous Friendship contracted by a long acquaintance; and most part of Men first satisfy themselves about the Estate and Fortune of the Party, before they begin to love their Person. These Provisions or Conditions are various, according to the Quality, Circumstances, and Intention of the Parties, which are indefinite; only it is to be observed, that such Children as Marry with the Consent of their Parents or Kins-folks, are for the most part well provided for, and out of danger of being impos'd on. In regular and solemn Marriages, which is the most honourable way of Marrying, sometime the Contract is sign'd before Solemnization; and it is advisable, in order to avoid many Inconveniences which may happen, that this be done before the Banns were proclaim'd in the Church.

All Contracts of Marriage are of this or the like Stile, in the beginning. *At Edinburgh the first day of August 1715, It is Appointed, Contracted, and Matrimonially Agreed,*
be-

between the Parties following, to wit, A. (the Man) on the one part, and B. (the Woman) on the other part, in manner following : That is to say, the said A. and B. have accepted and taken, and by these presents accept, and take each other for their lawful Spouses, and bind and oblige themselves, to solemnize and compleat the holy Bond of Marriage together, with all requisite Solemnities. In contemplation of the which Marriage, and for the Tocher after-mentioned ; here are placed the Obligations on the part of the Man, who if he be not a Landed-Man, is obliged to provide a Sum of Money of his own Means, and to employ it on Land or good Surety, and to take the Rights to himself and Spouse in Liferent, and to the Children of the Marriage in Fee ; In this place, the Provisions in favour of the Children, is insert. After the Obligations on the Man's part, follow those on the Woman's, who, if she have neither Father or Mother, or Brother, who Tochers her, she is the principal Obliger her self, and her part is ordinarily an Assignment to her Tocher or any claim of Money, in this Stile. And on the other part, the said B. by these presents Assigns, &c. The last Clause in all Contracts, according to the present Stile, expresses the Names of the Friends at whose instance Execution is to pass, either against the Husband for implement of the Provisions in favour of the
Wife

Wife and Children, or against the Woman, for fulfilling her part. And this because, by our Law, while the standing of the Marriage, regularly there can be no Action, at the Man's instance against the Wife, & *vice versa*. Here I only treat of Contracts of Marriage betwixt those who are not Landed Persons; of which take the following Examples.

A——— &c. In contemplation of the which Marriage, the said A. binds and obliges him, his Heirs, Successors and Executors whatsoever, to provide and secure the said B. his promised Spouse in Liferent, during all the days of her Lifetime, in all and whole an Annualrent or yearly Duty of 900 Merks Scots Money Yearly, free of all burdens whatsoever, and that by employing Money upon well holden Land, or in the hands of sufficient responsal Persons, and taking the Securities thereof to her in Liferent, at the sight and by the advice of C. And if the same shall be employed upon Land, to procure sufficient Confirmations by the Superior upon his own Expences for her security thereanent, and if the Money employed to that purpose shall happen to be uplifted, as oft to re-employ the same, by the advice and to the effect above-mentioned; And for further security, the said A. binds and obliges him and his fore-said, to make due and thankful Payment to the said

said B. of the foresaid Annualrent or Yearly Duty of 900 Merks free of all burden, as said is, at two Terms in the Year, Whitsunday and Martinmas in Winter by equal portions, beginning the first Terms payment thereof at the first Whitsunday or Martinmas next and immediately following the said A. his decease, for the half Year preceeding that Term; and so furth Termly thereafter during her Lifetime, with 40 lib. Money foresaid of liquidate Penalty for each Terms Failzie toties quoties. And also it is Agreed betwixt the said Parties that if it shall happen the said B. to survive the said A. In that case he hereby Dispones to her, his whole Household-plenishing and Moveable within his House, as well what now belongs to him, as what shall hereafter be either acquired by himself, or what shall come by her, to be intronnetted with, used and disposed upon by her at her pleasure, free of all Debt and Burden; Excepting only his Books and some Silver Plate, which shall be at his disposing, notwithstanding of this Disposition, whereof a particular note is to be made and subscribed by both Parties. And likeways the said A. binds and obliges him, and his above-specified, to make payment to the Children one or moe to be procreat of this Marriage, of the Sum of 10000 l. Scots Money to be divided, if there be moe than one, as the Father and Mother shall agree; and failzieing of any such division, to be divided equally; allowing to the Eldest, if a Son, 2000 Merks more than to
any

any of the rest : And if there be only Daughters, allowing as much to the Eldest Daughter ; and those proportions to be payable to the said Children at their respective Ages of 16 Years compleat ; and in the mean time he binds and obliges him and his foresaid, to Aliment, Educate and Sustain the said Children, according to their Quality, in all Necessaries for Maintainance, Abulziements and Education, till their Portion, be payable. And in like manner, the said A. binds and obliges him and his foresaid, to provide the just and equal half of all and whatsoever Lands, Tenements, Annualrents, Wadsets, Adjudications, Apprysings and Sums of Money, both Heretable and Moveable, that shall be Conquest or Acquired by him, or which shall fall to him during the Lifetime of his said promised Spouse, to himself & her, the longest liver of them two in Liferent, and the said whole Conquest to the Children to be procreated betwixt them in Fee ; and also to provide all Sums of Money and others, that shall fall to his Wife during the time of their Marriage, to him and her, the longest liver of them two in Liferent, and to the Children to be procreat betwixt them, which Failzieing to his nearest Heirs whatsoever ; Except only her own Cabinet, with such Pearles, Diamonds and Jewels as now belong to her, which she has power hereby reserved, to dispose of, in favours of any Person she pleases, without his consent, in case there shall be no Children. And he obliges himself and his foresaid to Ratify, and

and if need be, to renew any Right that shall be granted by her thereanent: Which Provisions above-mentioned in favours of the said B. she by these presents, accepts in full satisfaction of all Terce and third of Lands, or third or half of Moveables that may fall to her by her Husbands Death; or which her nearest of Kin can claim by her own Death, in case he survive her. And on the other part, The said B. by these presents, Assignes and Dispones to the said A. his Heirs or Assignees (excluding his Executors) the Sum of 5000 Merks Scots Money of principal, with 500 Pound of Liquidate Expences, and the Annualrent of the said principal Sum, during the not payment after Lambmasse in this Instant Year, contained in a Bond granted to her by ——— as Principal and ——— as Cautioner, Conjunctly and Severally, of the date ——— with the Bond it self, and all that has followed, or may follow thereupon: Surrogating and Substituting the said A. in her full Right and Place of the same for ever. Which Assignment she Binds and Obliges her, her Heirs and Executors, to Warrant from all Facts and Deeds done, and to be done by her or her foresaids prejudicial hereto allenarly: Likeas, she hath instantly delivered to him the Bond Unregistred to be Kept and Used by him and his foresaids, as their own proper Evident at their pleasure in time coming. As likewise, she Assigns to him and his foresaid, the Plea and Process Depending, at her and the rest of her

Sisters and Brothers Instance, against ——— Merchant in Rotterdam, for the number of 8000 Rex Dollars: And that in so far as concerns her part and proportion thereof: And all Acts, Decrets and Interloquitors, past or to be pronounced and past in her favours, and all benefit that may redound to her thereby, he always bearing a proportional part of the Expences debursed, or that shall be debursed in that Process. And farther she Assigns to him and his forefairs, her Part and Proportion of all other Means and Moneys, to which she has Right from her said deceased Father or Umquihle — her Mother, and to all Bonds and Securities granted to her by her Deceased Father and Mother conform to the Law of Holland in manner mentioned in her Mothers Testament, and other Writs granted by her Father to her for that effect. And for payment whereof, she may affect any Lands or Estate belonging to her said Father: and all Writs and Rights Made and Conceived, or which may be interpret in her favours thereanent, dispensing with the generality, And which she obliges her and her forefairs, to Warrant in manner above-written. Nevertheless, that what shall be recovered of her proportion of the Debt, due by the said ——— and of any other Means to which she has Right from her Father or Mother, or wherewith she may affect her Fathers Estate, shall be secured by the said A. to the said B. in Liferent, during all the

the days of her Lifetime, and the Fee thereof to the Children of this Marriage; which failzieing to the said A. his Heirs and Assignes whatsoever: And that over and above the Provisions above-specified. And lastly, it is agreed, that Execution shall pass on this Contract, at the instance of the said C. for Implement thereof, in favours of the said B. and the Children of the said Marriage. Registration, &c.

In another way, thus.

IN Contemplation of the which Marriage, and for the Tocher after-mentioned; the said A. by these presents, Binds, &c. to Provide and have in readiness, of his own proper Means, the Sum of 40000 Merks Scots Money, and to add and eik the same to the Tocher after-mentioned, which with the bygone Annulments thereof, hereby Assigned, extends to 10000 Merks, making in whole the Sum of 50000 Merks Money foresaid; and to Ware, Imploy and Bestow the same upon Land, or in the hands of sufficient responsal Persons, at the sight and by the advice of (the Womans Friends nam'd) and to take the Securies of 40000 Merks thereof to himself, and his said promised Spouse, and the longest liver of them two, for her Liferent-use, under the conditional restriction after-mentioned: And to the Children to be Procreat betwixt them, after

X X 2

their

their Decease, which failzieing to the said A, his own Heirs and Assignes whatsoever. And farther, he Bound and Obliged him, and his foresaid, to imploy 10000 Merks more upon Land, or in the hands of sufficient responsal Persons, at the sight, and by the advice above-written; and to take the Securities thereof to himself; and failzieing of him by Decease, to the Children to be Procreat of this Marriage, which failzieing to his other Heirs or Assignes whatsoever, Which Sum of 50000 Merks is to be divided among the said Children, as the said A. in his own time shall appoint; and if he shall make no such division, the same is to fall equally amongst the Children, allowing to the Eldest, if a Son——Thousand Merks more than any of the rest. And notwithstanding of the Provisions above-specified. It is hereby declared, That if the said B. shall survive the said A. and that there shall be Children of the said Marriage: In that case, her Liferent-provision above-specified, is to be restricted to 1800 Merks Scots Money Yearly, to be payed at two Terms in the Year, Whitsunday and Martinmas in Winter, by equal Portions, beginning the first Terms payment thereof, at the first Whitsunday, or Martinmas next, and immediatly following. And so furth Termly thereafter during her Lifetime, and the superplus of the said Annualrent of the 40000 Merks is to be quate by her, and to belong to her said Children. Declaring nevertheless,

vertheless, that if the Children shall happen to Die before their being Married, in that case, she shall recurr, and have Right to the Annual-rent of the said whole 40000 Merks from and after their Decease, during her Lifetime: Which Liferent Provision, the said B. with consent foresaid of her said Brother, by these presents, accepts in full contentation of all Terces, thirds of Land, third or half of Moveables or any other thing that may fall, or belong to her, or which she may any ways claim, by and through the Decease of the said A. her promised Husband, in case she shall survive him, or which her Executors or nearest of Kin can claim by her own Decease, in case she shall happen to Die before him; Except the equal half of the Household-Plenishing, that shall belong to him, the time of his Death; without deduction of the Moveable Heirship, to which half she is to have right, in case she shall out-live him, to be intromitted with, used and disposed upon, at her pleasure, free of all Debts and Burdens whatsoever.

If the Parties be Persons of quality, you say, It is agreed betwixt the honourable Parties following.

The consent of Father, Mother or other Friends, is thus,—A. 2d Son to B. with the special Advice and Consent of his said Father, and of C. his Elder Brother, and the said B. for himself, and them all with one Consent and Assent on the one part. And D. 2d
lawful

lawful Daughter to E. with the special Advice and Consent of her said Father, and of H. her Mother, and of his Eldest Son her Brother; And the said E. and F. for themselves, and taking Burden upon them for the said D. and them all with one Consent and Assent on the other part.

In some Contracts, the Father takes burden for his Son, which is indispenibly necessary, when the Son is a Minor.

Some Writers set down a day, betwixt and which the Marriage is to be Solemniz'd, thus——with all requisite Solemnities betwixt the——day of——without longer delay. I have seen also a penalty in case of failzie, but that is unnecessary.

In Case the Money lent out upon security taken to the Man and Wife in Liferent shall happen afterward to be uplifted; The Contract should contain this Obligement——And how oft the said Sum or any part thereof, shall be uplifted by the said——he binds and obliges him and his foresaids, as oft of new to Ware, Bestow, Re-employ the same at the sight, and by the Advice of the said——in favours, and to the effect above-mentioned.

In some Contracts of Marriage, the Clause concerning the Conquests, is thus,——Likas, the said——hereby binds and obliges him, and his foresaids, that whatever Lands, Tenements, Houses, Annualrents, Sums of Money, Mer-

Merchant-Ware, or any other Goods or Gear whatsoever that he shall happen to Conquest, acquire, or succeed to during the said Marriage any manner of way, that he shall provide the same, and take the Rights and Securities thereof to himself, and to the said — his Future Spouse in Liferent, and the Heirs or Bairns to be Procreat by them of the said Marriage in Fee, which failzieing to return to said Future Spouses their Heirs, Executors or Assigneys above-mentioned by equal division, as aforesaid.

When conquest is provided to Bairns of a Marriage, it is fit to consider of Succession, and to determine, if an Estate, which the Husband may succeed to, shall be provided to the Bairns Male or Female; In the Contract of Marriage betwixt — and ——— *It was provided, that the conquest shall pertain to the Females of the Marriage, but the Estate of the Father, to which the Husband being then a 2d Son, might in process of time succeed, was expressly excepted.*

A Wife in her part of the Contract of Marriage having, among other Sums Assign'd to her future Husband, certain Law-Suits, which were briefly narrated; And because she was provided to the Liferent of what should fall to her, during the Marriage, over and above her other Provisions. *It was declared, That what shall be recovered of her Proportion of the Debts due by — or of any other means, to which she has Right from her Fa-*

Father, Mother; or wherewith she may affect her Fathers Estate, be secured by the said A. (the Husband) to the said B. (the Wife) in Liferent during all the days of her Lifetime, and the Fee thereof to the Children of this Marriage: Which failzieing to the said A. his Heirs and Assignes whatsoever, and that over and above the Provisions above-specified.

If there be many Bonds and Sums belonging to the Woman, in her part of the Contract, they are particularly set down, and Assigned in common Form, the Assignment is a full Style.

In a Contract where the Woman Contracted, with consent of her Elder Brother, who being in Law obliged to Tocher her, at least, to fulfill his Father's Provisions; this was adjected to the behoof of the Brother.———*And which Sums above Assign'd, the said B. (the Woman) with consent of the said A. (her future Husband) by these presents accepts in full satisfaction of all that might fall to her, by the Decease of her said Father any manner of way.*

On the other hand, I have seen it provided——And farther, *It is is Agreed that the said B. and Failzieing of her Decease the Bairns to be begotten in the said Marriage shall be a Bairn in the said F. her Father's House, and be Portioner of his Goods, Gear, and Debts the time of his decease (The rest of the*

the Bairns being *Foris familiat*, or provided to the like Portion) Or thus,—*It is always exprefly provided and declared, that the said ——— shall be an Bairn of her Father's Houfe, and shall be in pari paffu with the other Children, and be an equal Sharer with them, the said other Children being always firft provided, each of them to the like Portion, and Referving the Heirship, and what shall fall due to the Heir of the said ———*

By the custom of this Kingdom, if within year and day the Marriage difolve, there not being a living Child of the Marriage Born, all things return to their former condition, as if there had no Marriage nor Contract been. But this inconvenience may be provided againft *quia pactum hominis tollit provisionem legis*. And it being uncivil, to fuppofe fuch a thing, fo as in the body of the Contract to provide againft it; a Bond or a Writ apart to this effect is more proper; which Bond may be in this, or the like Style.

BE it known &c. Me A. Forasmuch as, by Contract of Marriage of this date, betwixt me on the one part, and B. on the other part; I have Provided her in manner therein-exprefst. Yet nevertheless, in regard, that by the Law and Custom of Scotland, if the Marriage fhould difsolve by my Death within Year and Day: And that there be no

Children betwixt us, she should only have Right to her own Tocher. And therefore, in contemplation of the foresaid Marriage; I do hereby Oblige myself, my Heirs, and Executors, that in case our Marriage shall dissolve within Year and Day, and that she shall outlive me, and that there be no Children then Procreat betwixt us, in that case, not only to Repone her to the Right of her own Tocher, with Warrantice from my own proper Faët and Deed and to make up any part thereof, that shall be Uplifted by me. But likeways, to make payment to her, her Heirs or Assignes, of the Sum of 12000 Merks Scots Money more, and that at the first Whitsunday or Martinmas next and immediatly following my Decease, if the same shall happen within Year and Day, without Children, as said is, with Annualrent of the said Sum so long as the same remains unpaid, after the Term of Payment foresaid, and 1000 Merks Money foresaid of Liquidate Expences in case of Failzie, over and above performance of the Premisses: And this beside any other thing of Gold, Money, or Jewels, Gifted, or that shall be Gifted by me to her. And I declare this present Obligation shall be as sufficient as if it were ingrossed in the Contract of Marriage. Registration.

To supply the want of a Contract in runaway, or hasty Marriages, the Married Couple may cause Write one of same the Tenor

nor with an Antenuptial Contract, which by Law, in so far as, the Provisions are rational, will bind Parties to the observance of the Conditions. This Postnuptial Agreement differs in nothing almost from the other, save in the Narrative, as will appear from the following Example.

IT is agreed betwixt A. on the one part, and B. now his Spouse, with Advice and Consent of C. her Brother; And the said C. for himself on the other part, That is to say, Forasmuch as, albeit the said A. and B. are already Married; Yet there having been no Contract hitherto betwixt them: The said B. is not sufficiently secured in any Joynture, nor are the Children of the Marriage Provided, or a Tocher given to the said A. according as was Communed and Agreed upon betwixt the said Parties, before and at the Marriage; In contemplation whereof, and of the Tocher after-mentioned. The said A. Obliges him &c. as in an Antenuptial Contract. For which Causes the said C. Obliges himself to make payment to the said A. in name of Tocher &c. in common Form as above.

Of Tacks and Alledations.

ATack is a Contract of Location, where-
by the Proprietar Sets to another
Y y 2 Per-

Person, Lands, or Tenements in Town or Landward, during a certain space of time, for a certain Hire or Duty.

Our Law requires necessarily in a formal Tack, 1. That it contain the denomination of the Tenement Set, 2. That it express the Entry and Issh. That is, when it should begin and end. And also 3. The special Tack-duty, and time of payment thereof.

Any thing may be the subject of a Tack or Location, which in the use thereof, may be profitable to our Neighbour, *Salva rei substantia*, as Mens Labour, Moveables, both Dead and Living, Lands, Tenements; But when Men are Hired for daily Labour, or Horses Hired for a Journey and the like, one seldom puts the Agreement into Writing, tho' Bargains for frameing a work of considerable value, as Building of a Ship, or a House, or the like, are in use to be Compris'd in a Contract, where the Conditions of the Agreement are set down and expressed, whereby they're best kept in memory, and observance: an Error, Mistake, or Forgetfulness of the least of these, being of no small consequence to either Party, to give an *Idea* of this sort of Contract, I shall set down one That was made for Building a Bridge over a River.

THE

THE Obligements on the Massons part, were
 to Build a Bridge upon ——— consisting of
 two Bowes, each Bow 24 Foot of Wideness, the
 Cuinzies of the Pend of Free-stone, with a Mid-
 pit of Free-stone, with a Pean or Beek upon the
 Current of the Water: and to make sufficient
 Landsteals for Man and Horse, to go and Ride
 upon the same; And to Build upon each side of
 the Bridge, next to the Current of the Water,
 15 Foot of Wall next the Brae: And to make
 it 4 Foot of Hight from the Foundation of Dry-
 stone, and to lay some great Stones about the
 middle Pillar, for defending it from the Ice:
 And to Build the said Bridge Ten Foot broad,
 and to Causeway it all over, from the one end to
 the other, and to Build Ledges Eln-hight, and
 to Cope them with Free-stone, and to Bate them
 sufficiently with Iron, and to run the same with
 Lead, and to Build a Pend betwixt ——— and
 ——— upon the Gotes. So that there may be
 free Passage to the Bridge, and to Flagg other
 three Gotes. And to Build an other Bridge over
 ——— of two Bows, and a blind Bow, and to
 Flagg the rest of the Gotes, and to cast Chingle
 upon them, and make the way Passable; and
 to Repair another Bridge, and to help some of
 the Key Stones which are defective, and to put
 Spouts for carrying away the Water off the said
 Bridge, and to take down the beek of the midd
 Pillar of the said Bridge, from the top to the
 bottom, and to Build it up of new, and to put in a
 great

great Iron Gadd from the bottom of the Water, to the top of the Beek, with a number of Branches going out, which is to be Battled in with Lead in the Stones, and to Batt as much more as is thought convenient. And the Gentlemen on the other part, Bound themselves to pay the price agreed upon at 3 Terms, one was at the beginning of the Work, the other at the midale of the Work, and the last was at the finishing, and out-redding the said Work.

And the Heretors Living in the places where these Bridges were to be Built, gave an Obligement, in a paper a part of this Tenor: Binding themselves each of them, for their own Parts and Proportions, according to their valued Rent within these Paroches, to furnish Horse and Men, for carrying, Iron, Timber, Lyme and Lead to the Works, for Building and Repairing the said Bridges, according to the former Contract, and to bring them within an Ell of the place where they are to be made use of, if it can be conveniently done for the ground about them: With this Condition, That the whole Materiales are to be Provided, and Bought up by the Massons, either at S. or A. or both. And the Heretors were not oblig'd in Carriages from any other places: And these Carriages were to be call'd for, at seasonable times, and not in Harvest. And the Heretors Bound themselves to Meet, and stent every Man's proportion of the said Carriages: And the
Or-

Order according to which they should be called for; And to deliver this cast to the Massons above-nam'd. And the Heretor who was to be deficient in his Carriages: So that the Massons should thereby ly idle through want of Materials, Bound themselves to pay the Massons 10 sh. each Day they lay idle for want of Carriages: But in case War, Famine, and Pestilence, should fall out in the Countrey, (as God forbid) whereby the Heretors would not be able to perform these Carriages and Services. In that case, it was not to be imputed to them as any breach of this Agreement; neither were they lyable in payment of the Penalties.

The word Tack with us is only in a proper use of it, applyed to signify, a Location of Lands or Tenements, which is in the following Stile. *At* ——— it is appointed, agreed, and finally ended, betwixt A. Heretable Proprietor of the Lands and others under-written on the one part, and B. on the other part, in manner following, That is to say, the said A. has Set, and in Tack and Affedation letten, and by these presents Sets, and in Tack and Affedation for the Tearly Mail and Duty under-written, Letts to the said B. his Heirs, Executors or Assignneys, being of no higher degree than himself, all and whole the Lands of ——— with Houses, Biggings, Yards, Out-field, In-field, Mosses, Mures, Meadows, Common-pasturage, Parts, Pendicles, and Pertinents thereof, as the same were last possesst by ———
all

all lying within the Sheriffdom of—— together with the Teind-sheaves, and other Teinds Parsonage and Viccarage, of the Lands and others foresaid; and that for all the Days, Space, Years and Terms of 19 Years next and immediately following the said D. his Entry thereto, which is hereby declared to have been and begun at Whitsunday last bypast in this present Year 1715, and from thence forth to endure, and to be peaceably Laboured and Manured by the said B. and his foresaid, as the same lyes in breadth and length, with free Ish and Entry to and from the same, and with all and sundry Priviledges, Easements and righteous Pertinents whatsoever, freely, quietly, well and in peace without Revocation. Which Tack and Affedation the said A. binds and obliges him, his Heirs and Successors, to warrand, acquite and defend to be good, valide and sufficient to the said B. and his foresaid, at all bonds, and against all deadly. For the which Tack, Lands, Teinds, and others above-rehearsed, the said B. binds and obliges him, his Heirs, Successors, Executors and Intrometters with his Goods and Gear whatsoever, to make due and thankful payment to the said A. or to—— his Factor and Chamberlain, or to any other Person whom he shall appoint for that effect, of the Sum of—— Scots Money for the Lands of C. and of the Sum of—— Money foresaid for D. at two Terms in the Year Whitsunday and Martinmas by equal portions, beginning the first Terms payment at Martinmas

tiamas next, and the other at Whitsunday 1716, for the Year preceeding, and so furth Yearly and Termly thereafter, during the continuance of this Tack. And in like manner the said B. binds and obliges him and his foresaids at the expiring of this Tack, to leave the Houses in a sufficient Condition and at the expiring thereof, to flit and remove himself his Family, Cotters and Servants, Goods and Gear, furth and from the Lands and others above-mentioned, and leave the same void and rid, to the effect that the said A. and his foresaids, may enter thereto without any warning or process in Law; And both the said Parties bind and oblige them, and their foresaids, to observe and perform the Premisses to others, and the Party failzier to pay to the other Party, the Sum of 500 Merks Scots Money of liquidate Expences, Besides performance of the Premisses, Registrati-on.

This Tack-Duty may be either in Money alone or Victual, or may be in Money and Victual jointly, and also the Tennent bound to pay publick Burdens, or Ministers Stipends, with Thirlege to a Miln, &c. which is thus expressed ——— To make payment of 300 Merks at two Terms in the Year Whitsunday and Martinmas by equal portions, beginningst the first Terms payment thereof at Whitsunday next to come in the Year 1715, and so forth Yearly and Termly thereafter, during the

continuance of this Tack, with 6 Bolls good and sufficient Meal, and 6 Bolls good and sufficient Beer Yearly, betwixt Yule and Candlemass, beginning the first Years payment of the said Victual betwixt Yule 1715, and Candlemass 1716, and that for the Cropt 1715, and so forth Yearly thereafter during this Tack; together also, with the Sum of 20 lib. Scots Money of Teind to the Minister of ——— and to deliver Yearly to the said A. or his foresaid, sufficient Discharges thereof; together with the Multures and Services to the Miln of ——— used and wont to be payed by the Tennents of the said Lands, and to pay out and advance the half of all publick Burdens imposed, or that shall be imposed upon the said Lands, during the time of this Tack: (or thus, to relieve him of the equal half of all publick Burdens that shall be due and payable forth of and for the Lands, Teinds and others, contained in this Tack, during the continuance thereof, and to advance the whole publick Burdens as they shall happen to fall due, he getting allowance of the other half thereof, out of the first end of his Rent) and to pay the Officer's Fee, Damm-Silver, Multur-Beer, and other Casualties incident to the said Lands.

The Tennent, getting the Houses good and sufficient, is bound to leave them in as good a Condition; yet this is not always so, for clearing Matters of Controversy about the

the Houses, I have seen this Clause in a Tack, and for obviating and preventing all differences that may fall out concerning the present condition of the Houses upon the Land contained in this Tack; It is agreed betwixt the said Parties, that the same shall be sighted and pryed presently by four honest Men, two to be chosen by either Party, and they are to be again sighted in the same manner at the expiring of this Tack; and if they shall be found to be worse, the said B. and his foresaids are hereby obliged to make them in as good Condition, and to leave them so then, as they are found to be now; and if they shall be found to be better, then nor at this time, in that case the said A. is to pay in to the Tennent the superplus, more than they are pryed to at this present time, not exceeding the Sum of 100 l. Scots.

I have seen this Clause in a Tack, after the Clause for leaving the Houses tight—
And in regard the said B. gets the whole Dung & Failzie upon the Ground of the said Room, for the labouring of the Beer-land, and likeways an Hay-stack of——fathoms: Therefore he binds and obliges him and his foresaids, to leave as much Dung upon the Ground thereof, with another Stack of Hay of the like Quantity, at the expiring of this Tack, as he now receives.

Some Tacks have a Clause for either Party to be free within a certain number of Years, and an Irritancy against the Tennent, if he suffer two Terms Rent to run into a

third unpay'd, which is placed before the Obligement to remove ; Thus, And likewise it is agreed, that both Parties shall be free of this Tack at the end of the first five Years thereof ; they always giving timeous advertisement of their intention, threescore days preceeding the Term, at which they intend to be free. And it is hereby agreed, that in case two Terms of the said Silver-duty shall run in the third unpay'd, then and in that case, it shall be lawful to the said A. to remove the said B. or his fore-said, from the Lands and Others above-mentioned, and to set and dispose otherways there-upon as he shall think fit ; This Tack being in that case to become from thence forth null and void.

Some Masters, to keep their Tennents from spoiling the Ground by undue Labouring the same, oblige them to Till and Manure the same in a certain manner prescribed to them in the Tack, and to preserve the young Timber planted upon the Ground.

The Tack of a Dwelling-house differs not much from the former, and is thus,
 ——— Sets, and for the Mail and Duty under written in Tack and Affedation, lets to the said B. his Heirs, Assigneys, and Sub-Tennents, one or moe, his Dwelling-house presently possessed by C. tying, &c. And that for all the Days, Years and space of five Years next and immedi-
 atly

ately following his Entry thereto, which is to begin at Whitsunday next to come. Clause of Warrantice. For the which Tack and Affedation, the said B. binds and obliges him to pay Yearly to the said A. his Heirs, Executors or Assignes, the Sum of 500 Merks Scots Money at two Terms in the Year, &c. beginning the first Terms payment, &c. and so forth Yearly and Termly thereafter, during the space of this present Tack, with Penalty, &c.

A TABLE

A TABLE, shewing, how many Years Purchase, a Tack or Annuity to endure for any number of Years under 32, is worth presently, at Interest upon Interest at six *per cent*. Shewing also, how to Discount any Tack, with the true Value of the Reversion, after any number of Years.

The Explanation and Use of this Table.

Value of the Pur- chase.				The first Column, to- wards the left, sheweth the Years of a Tack, and Right against it stand the Year, Month, and Decimal part of a Mo- nths Purchase, that such a Tack is worth.	Value of the Pur- chase.			
Years of a Tack	Years	Months	Decimal part of a Month		Years of a Tack	Years	Months	Decimal part of a Month
1	1	0	0	<i>Example,</i> Suppose, a Tack to continue Ten Years, one desires to know the worth of it, in a Sum presently told down. Look into the Table for the figure 10, in the Column that stands for the Years of a Tack, and against it in the same line in the three other Columns, you find 7, 4, 3, which sheweth, such a Tack is worth 7 Years 4 Months and 3 ten parts of a Months Purchase.	1	1	0	0
2	1	1	0		17	10	5	8
3	1	2	8		18	10	9	2
4	2	5	2		19	11	1	3
5	4	2	5		20	11	5	7
6	4	1	0		21	11	9	3
7	5	7	0		22	12	0	5
8	6	2	5		23	12	3	5
9	6	9	6		24	12	6	6
10	7	4	3		25	12	9	4
11	7	10	7		26	13	0	0
12	8	4	6		27	13	2	5
13	8	10	3		28	13	4	9
14	9	3	6		29	13	7	1
15	9	8	5		30	13	9	2
16	10	1	3		31	13	11	0
					32	14	1	0

By this Table, the Value of the Lots, in the Parliamentary Lotteries, may be Calculated and known.

of

Of Submissions.

BEfore Persons at variance, go to Law, they are in duty bound to endeavour an Accommodation, in order to which they ought first to confer among themselves, and if that has no effect, through their being wedded to their own opinion, affected to their own Interest, and disdaining to yield any thing to their Antagonist : It is proper to call for the Mediation of one or two honest knowing Neighbours, who may Cognosce and Settle these differences. For Terminating which in a more firm manner, so as their Sentence may take effect, they cause write a Submission which is, a Mutual Agreement of two or more Parties at difference, wherein they refer, the ending of their Controversy to the Arbitriment and Determination of one or more Arbiters, and Oblige themselves to stand to their Decision.

A Submission is either general, of all Clags, Claims, Questions, Demands, &c. Or special, of a certain Controversy, concerning a particular subject.

As in judgement so in a Submission, there are three Parties, Two whereof are these who strive and contend together, and the third is the Arbiter.

Per-

Persons by Law forbidden to convey their Goods, or to bind their Persons, are incapable to enter into a Submission.

An Arbiter is the Person, who by the Parties in their Submission is elected to decide the Difference and Controversy betwixt them, and he differs from an Arbitrator, who brings the Agreements and Bargains of Parties to an happy issue, determines the Price of Goods Bought and Sold and the like. An Arbiter then is a sort of extraordinary Judge, whose Power and Jurisdiction is owing only to the Mutual Consent and Election of the Parties contending; And because the matter is committed to his Pleasure and Arbitriment he's called an Arbiter or Arbitrator, or that it is done by the Mutual Promise or Compromise of the Parties, he's termed, *Compromissarius judex*. His Power is larger than that of any Judge ordinary or extraordinary appointed by a Sovereign, for an Arbiter may judge according to his own Mind, having God and a good Conscience before his Eyes, and that as well in Matters respecting Fact, as these which concern the Law, to the Forms whereof he is not tyed: whereas Judges properly so called, are bound to observe the Form, Rule and Order prescriv'd by Law, whereof they are the Executors: For which cause, Tully said well, *Aliud est judicium, aliud Arbitrium*;

nam

nam Judicium est pecunia certa, Arbitrium incerta, ad Judicium hoc modo venimus ut totam litem aut obtineamus, aut amittamus; at Arbitrium hoc modo adimus, ut neque nihil, neque tantum quantum postulamus, consequamur, which gave rise to the Proverb, He that puts his Coat to the Dying, is like to lose a Quarter.

Arbiters have a most illimited Power, by the *Act of Regulation 1695, Art. 25.* Which prohibits the Lords of Session to sustain Reduction of any Decreet Arbitral, for any Cause or Reason whatsoever; except, Corruption, Bribery or Falshood, to be alledged against the Arbiters.

Seeing then, the Power of Arbiters is so great and uncontroleable, waryness must be used in the choice of them, in which the Parties are to seek for a sufficiency, and an indifferency; that they be skilful in the Matter Submitted, and free from Malice or Favour to either Party.

Now in every Submission, these three Things are to be observed. 1. That it be in Writing, and bind the Parties, their Heirs and Executors, to stand by and observe the Decreet Arbitral. 2. That it give the Arbiters sufficient Authority, to do all Things necessary for ending the Controversy, as to appoint Time and Place of Meeting, Examin Witnesses, and other

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mean of Probation; and at last to decide in the Matter Submitted. 3. That it express a special time betwixt and which the Decision and Sentence is to be pronounced, lest the Parties be long lingred with vain hope and expectation, and that the Arbiters may before the set time pronounce their Decreet; for what they Arbitrate after the time appointed, is void. Yet a Submission *sine die*, lasts for Year and Day after its date.

When the Parties sign the Submission, they put their Name to a blank on the other side, above which Subscription the Arbitrator writes his Decreet, which when Registered by vertue of the Clause of Registration in the Submission, will be warrant for Letters of Horning.

The Arbiters are to sign the Submission in token of their Acceptance, after which they could be compelled to pronounce Sentence: And some Submissions have an Obligation upon the Arbiters to Decide betwixt and a certain day, on which, Horning and toher compulsory Diligence could be raised.

Follows the Stile of a Submission.

A^T ——— A. for himself, and taking
burden upon him for his Partners on the
one part, and B. for himself, and taking bur-
den

den upon him for his Partners on the other part ; Have submitted, and by these presents submit themselves to the amicable Determination and final Sentence Arbitral to be given and pronounced by C. Arbiter chosen for the part of the said A. And to D. Arbiter chosen for the part of the said B. concerning what shall be found due by the said A. of his Charge in the Collection of his Majesties Customs and Excise at Leith after just Compt and Reckoning, for the three Years immediatly preceeding the first of November—— And concerning what shall be found due after just Compt and Reckoning by the said B. for his whole Intromissions and Charge of the Money payed in and Compted for to him from the several Collectors in Scotland, for the said three Years, as shall at more length be contained in the Claims to be given in hinc inde by the said Parties, to the said Arbiters, which are holden as repeated and exprest ; with power to the said Arbiters to examine and take Information from the respective Partners or Others concerned ; and to call for, and consider the Instructions to be given in by both Parties, and to Decide and Determine therein, as they shall think fit and just ; and to give forth their final Sentence and Decree-Arbitral, and insert the same in the Subscribed, blank, upon the back hereof, betwixt and the——day of—— without delay. With power likewise, to the said Arbiters in case of Variance before that day, to choise an Overs-man, And whatever

the said Arbiters or Overs-man in case of Variance betwixt them shall Declare and Determine in the said Matters, and insert in the blank upon the back hereof, betwixt and the day foresaid : Both the said Parties for themselves, and taking burden for their respective Partners, bind and oblige them, their Heirs, Executors and Successors, to stand, abide thereat, underly, and fulfil the same, without any Appellation or Reclamation whatsoever, under the pain and penalty of——to be payed by the Party Failzie to the other Party, in case of failzie, over and above performance of what shall be Determined by the Decreet Arbitral. And in case the above-named Arbiters, or in case of Variance, the Overs-man to be chosen by them, shall not before the 10th of——next, Decide and Determine in these Differences ; Then and in that case, this present Submission, and all that shall follow thereupon, shall from and after that day be null and void, as if it had never been entred into,

In the case of a Controversy about Lands, The Matter of the Submission is expressed thus,——Submits to the Sentence Arbitral to be pronounced by C. concerning the several pretences to be made by both Parties, to the property of the Lands of D. with Houses, Biggings and Pertinents thereof, lying &c. Conform to the Claims to be given in by the said Parties, to the said Arbiters hinc inde thereanent,
which

which are holden as expressed in this present Submission, with Power to the said C. to Decide and Determine, which of the said Parties Rights are best, and most preferable to the property of the foresaid Lands : And to Determine to whom the Property of the same Lands shall belong, and what shall be payed by the Party who gets the Lands, to the other Party in satisfaction of his Claim ; and what Writs shall be granted by either of the said Parties to others thereanent. Likeas the said C. by these presents, accepts the Decision of the foresaid differences in and upon him ; And shall pronounce and give forth his final Sentence, and Decreet Arbitral in the said Matter, and Insert the same in the Subscribed blank upon the back hereof, betwixt and the ———— without longer delay : And whatever the said C. Declares and Determines, &c.

A short Form of a Submission.

WE A. and B. by these presents submit and refer to C. and D. all Controversies, Claims and Competition of Right between us of and concerning the Lands of ———— and oblige us and our Successors to abide by and obtemper, their Decreet Arbitral to be thereanent pronounced betwixt and the ———— day of ———— next to come, under the Penalty of ———— besides performance.

On

On the other hand an Arbitration, or Reference to an Arbitrator is in this Form. *I A. do hereby Refer and Submit to B. and C. what shall be given by me to D. upon consideration of his pains taken for me, (or upon any other consideration: Which according to the circumstance of Parties may be specified) And whatever &c. I Bind and Oblige me to pay the same to the said D. accordingly with Penalty, &c. And I consent to the Registration hereof, and of the Determination in the Books of Session, &c.*

The Decreet Arbitral is the Sentence pronounc'd by the Arbiter or Arbitrator, one or more, upon the controversy, for ending whereof, they were chosen by the contending Parties. In the Form of which Sentence, these things are specially to be regarded. 1. That it be made according to the very Submission, touching the thing Compromis'd, and in every circumstance thereof. 2. That it put a final end to the Controversy. 3. That it appoint either Party, to do or give to the other something beneficial, in appearance at least. 4. That the performance be possible and lawful, and attainable by the Party. 5. That nothing enter into the Decreet, that was not submitted, either expressly, or by necessary consequence.

The

The Decreet Arbitral is Written in the Signed Blank on the other side of the Submission ; And is in this or the like Style.

WE ——— Judges Arbitrators under-written, with the special Advice and Consent of ——— Odsman and Oversman after-mentioned, &c. Forasmuch as, ——— and ——— on the one and other parts, have submitted themselves to us the said &c. And in case of Variance betwixt us to &c. Odsman and Oversman equally and indifferently chosen by both the said Parties, concerning all Actions and Questions, and Debates standing betwixt the said Parties, and which either of them lays or may lay to others charges, for whatsoever Compaction or occasion bygone, preceeding the date of the said Submission, conform to their Claim, given in by either of them thereupon : And the said Parties having referred the particulars above and under-written, to the Determination of us the said Judges Arbitrators, with Power to us, to Decide thereintil : And in case of Variance betwixt us by the said ——— Odsman and Oversman above-mentioned, as at more length is contained in the said Submission written on the back hereof. And we the said Judges Arbitrators having accepted the said Matters Debateable upon us : And we being therewith well and ripely advised, and for our better help and supply thereintil, having taken the Advice and Resolution of the said Odsman and Oversman within and above-named

named; and after large Hearing, Conference and Communication with both the said Parties thereanent, and consideration of the respective Claims, given in to us by the said Parties. We with the special Advice and Consent of the said ———— Odsman and Oversman above-named, all in one voice, after mature deliberation, having God and a good Conscience before our Eyes, have Decerned and Ordained, and by these presents Decern and Ordain in manner following (here Insert the Decerniture, and then say) And this is our Decreet and Sentence to all and sundry whom it effeirs, we manifest and make known, and Consents that the same, with the Submission within written be Insert, and Registred, &c. &c. &c.

Seeing our proposed Method would not allow us to comply with the ancient Order in all Law-Writings, to begin with what concerns the Church; We shall conclude with a Call for a Minister, by the Heretors and Elders of a Paroch, which was of late in place of the Patron's Presentation, and in some places is still observe.

A Call to a Minister.

WE the Heretors and Elders of the Parochine of L——— being credibly Informed of the Literature, Qualification and good Conversation of A. late Minister of the Gospel
at

at B. and of his desire to continue in the Function of the Ministry within the Kirk of God: Therefore we have Nominated, Called and Presented, as we by these presents, Nominate, Call and Present the said A. during all the days of his Lifetime, to be first Minister of the said Kirk and Parochine of L. and to the Manse and Gleib, and constant local modified Stipend belonging thereto, conform to the Decreet of Locality and Provision of the said Kirk, which is now Vacant by the Death of ——— late Minister thereat; Requesting the Reverend Moderator and Ministers of the Presbytry of L. to admit and receive the said A. to be Minister of the foresaid Kirk, and of the foresaid Paroch, and to the Manse and Gleib thereof, and constant local modified Stipend belonging thereto; and to Authorise him with a Testimonial of his Admission to the same in due and competent form as effeirs. And likewise, Requesting the Lords of Council and Session upon sight of this our Presentation, with the Admission and Institution to follow hereupon, to grant Letters of Horning upon a simple Charge of ten days only at the instance of the said A. for readily answering, obeying, and making payment to him, his Factor, Servants, and others in his Name, of the foresaid Stipend and other Duties belonging to the said Kirk, conform to the Decreet of Locality above-written, and that for the Crop and Year of God ——— in so far as the Representatives of the said ——— have no

Right thereto ; and Tearly and Termly in all time coming, during his Lifetime, and serving the Cure at the said Kirk. Registration for Preservation.

Another Form of a Call.

WE the Heretors and Elders of the Parochine of ——— under-subscribing, Considering that the Kirk of ——— is Vacand by the Decease (or Deposition) of ——— and that by the late Act of Parliament abolishing Patronages, the Nomination and Calling of Ministers to Churches, is given to the Heretors and Elders of the Parochine ; And we likeways considering the great Abilities Faithfulness and Diligence of ——— in the Office of the Ministry, and his singular and unblameable Life and Conversation, Do therefore Unanimously with one Consent, Nominat, Elect, Call and present the said ——— the Minister at ——— and to the modified, Constant and Local Stipend, Manse and Glich of the same : Earnestly Entreating the said ——— to accept of this our Unanimous Call, and requesting the Moderator and Brethren of the Presbytry of ——— to receive and admit him to the Ministry of the said Kirk and Parochin of ——— with all Solemnities requisite in the like case, and to the Manse, Gleib, and constant Local and Modified Stipend belonging thereto ; And
Re-

Requesting the Lords of Council and Session upon sight of this our Call, and Presentation with the Collation and Institution to follow hereupon, to grant and direct Letters at the instance of the said——— for readily obeying and making payment to him, his Factors, Servants and others in his Name of the foresaid Local constant and modified Stipend for the present Year 1715 in time coming during his Lifetime or Service of the Cure at the said Kirk, and for entering him to the Possession of the said Manse, and Gleib, and removing the Possessors from the same; In testimony whereof we have subscribed.

When the other Parochiners besides the Heretors and Elders agree to the Call, an Approbation in the following form is convenient. *We undersubscribing Parochiners of——— Do allow and approve of the Call given by the Heretors and Elders of the said Paroch to B. To be our Minister, and heartily concur therein, In Witness whereof, &c.*

The Act 26 Parl. 1693. Discharging the Power of Presentation of Ministers by Patrons, being Rescinded, and the Law of Patronage by Act 12. of the Parl. Q. Anne: Holden the Tenth Year of her Reign Annis 1710 and 1711. It is fit to give the Form of the Writ of a Patron's Presentation of a Minister to a Vacant Church.

I A. undoubted Patron of the Parochine and Paroch Kirk of——— to the Reverend Moderator

derator and remanent Members of the Presbytry of———Greeting, Forasmuch as, the said Kirk of——— is Vacant in our hands, and at our Gift and Presentation, by the Decease of the Reverend———late Minister thereof, and I being desirous that the same be provided with some meet qualified and goodly Man, fitted for the Exercise of the Holy Ministry, and being informed of the Ability Literature and Qualification of B. to discharge the Office and Function of a Minister within the Church of God, and of the great Pains Travel and Study taken by him these several Years past for that effect: Therefore, I have Nominated and Presented, and by these presents, &c. the said B. to the Ministry of the said Parochine and Paroch Kirk of———and to the Manse, Gleib and Stipend, with all the Priviledges, Profits and Emoluments of the same, as was formerly possessed by and payed to the said———late Minister thereof, and that for the Crop and Tear of God 1715, and yearly in all time coming during his Incumbency there, Requiring and hereby Desiring you the Reverend the Moderator and Remanent Brethren of the said———Presbytry, to take Tryal of his Qualifications, and being found Qualified, to admit him to the said Church, and grant Collation and Institution, conform to the Laws and Acts of Parliament made thereanent, Requesting also the Lords of Council and Session or any other Judges Competent upon sight hereof, and of his said

said Collation and Testimonial of Admission, to grant Letters of Horning on an simple Charge of Ten Days and other Executorials as effeirs, at the instance of the said B. for causing of him his Factors Servants and others in his Name to be thankfully answered, obeyed and payed of the said Stipend, with all the Profits, Priviledges and Emoluments of the said Kirk of——— for the said Crop and Year of God 1715, and sick-like Yearly in all time coming during his Incumbency, in due form as effeirs.

If the Patron be Pupil, the Presentation is given by his Tutors, thus, *We A. B. C. and D. Tutors Testamentars to a Noble Earl E. Earl of F. &c. ——— is Vacant, and fallen in the hands of the said E. Earl of F. our Pupil and at his Gift, &c.*

Every Presentation should narrate the *Modus vacandi*, so that if the Church was Vacant by Deprivation of the last Incumbent; The Presentation mentions the same thus,——— *Through B. last Minister thereat, his being Deposed from the Office of the Ministry in the said Parochin by the Lords of his Majesty's most Honourable Privy Council, conform to the Act of the date ——— or by the Synod of ——— or by the General Assembly of the Church of Scotland, Met at ——— upon the ——— Day of, &c.*

Or if the Church was Vacant by Transportation of the last Minister to another Church, the Presentation proports it thus,
through

Through the said B. last Minister thereat his being duly and lawfully Transported from the said Church of C. to the Church of D.

The mentioning of the Stipend in the Clause of Presentation is various, as thus,
 ———To the constant Local and Modified Stipend of ——— Manse, Gleib and Pasturage of the same, for the half of the Crop and Tear of God, 1715. and of all Cropts and Tears thereafter, during the said B. his Lifetime, and serving the Cure at the said Kirk, to be peaceably brooked enjoy'd and possess by him, sicklike, and as freely in all respects as the said ——— brooked, enjoyed and possessed the same of before.

If the Patron present a Minister, who is Incumbent of another Kirk, he does not require the Presbytry to take Tryal of his Literature and Qualification, but the Clause is thus, Requiring, since the Qualification Literature, and good Conversation of the said B. has been sufficiently tryed already before he was Admitted to be actual Minister of the said Kirk of ——— Whereby he has been found able and qualified hitherto; To use and Exercise the Office and Function of Ministry within the Kirk of God, that ye Admit him to the said Kirk of B. and that ye give order, that he may have Collation and Institution in the said Benefice, according to the course of Ecclesiastical Discipline Etablissement by the Laws of Scotland, and order used in such Cases; And if any impediment

pediment happen herein, that ye make to me due and lawful Certification thereof, to the end I may present an other thereto in time convenient.

The Clause of Recommendation to the Lords may be thus, ——— *Direct Letters of Horning at the instance of the said B. against all and sundry Heritors, Liferenters, Conjunct-Fiers, Fuers, Fermers, Tennents, Tacksmen, Occupiers and Possessors of the Lands within the said Parochin, and all others adebted and, in use of payment of the foresaid Local and Modified Stipend.*

To the Clause for Execution, I have seen adjected the following one which is very proper ——— *and for commanding and charging the Occupiers, and Possessors of the Manse, Gleib and Pasturage thereof, to Flit and Remove themselves, and leave the same void and red, to the effect the said B. may enter thereto, and peaceably bruik and enjoy the same during the space foresaid.*

Because according to the present Law, some Patrons have Right to the Tythes remaining, and which will be over and above the Ministers modified Stipend, the Patron so circumstanc'd shou'd in the writ of his Presentation make a Reservation of this Right, which is done by the following Clause inserted before the Registration ——— *Reserving always to me my Heirs and Successors, that part and portion of the Tythes,*
Par-

*Parsonage and Viccarage, and others of the
foresaid Parochine, which shall be found to be
over and above the Stipend Modified and Local-
led to the Minister.*

I shall conclude this by giving a singular
Case of Presentation——Forasmuch as the
Reverend A. present Minister at the Kirk of B.
is become valetudinary, and we being desirous,
that the Paroch suffer no prejudice through
his Indisposition, and being informed of the
Ability, &c. of——Therefore we have
Nominated and Presented, and hereby Nomi-
nate and Present the said——to serve in
the Ministry of the said Paroch, during A's
Life, and in Conjunction with him and to
the Manse, Gleib, &c. to one half of the Stipend,
with all the Priviledges, Profits and Emolu-
ments of the same, as is now possessed by, and
payed to the said A. for the Crop and Tear
1715, and Tearly during the said A. his
Life, and after his Decease to the whole
Ministerial Charge and the whole Stipend in all
time coming, during his Incumbency there.

In the time of Episcopacy, a Presentation
by a Bishop, who was both Patron, and ordina-
ry, comprehended likewise a Collation,
and wanted the first Request concerning
the tryal of the Qualifications of the Person
presented, but in place thereof, it mention'd
that he had try'd and found him fit, as will
appear from the Collation following, and if
the

the Bishop was only Patron, and the Church did ly within the Diocess of another Bishop, the Form of the Presentation differed not from that by a Laick Patron.

Tho' in Time of Episcopacy, and in the former Times of Presbytry, Edicts and Collations, in their proper Stile were us'd ; Yet now all this is Transacted by way of Act in the Presbytry, nevertheless for clearing up the Law of Presentation, I here give the Stile of both.

An Edict by the Bishop is thus, ——— A.
by the mercy of God, Bishop of B. To my well
beloved Brother the Moderator and Brethren of
the Presbytry of B. Executors hereof, Conjunct-
ly and Severally, specially Constitute, Greeting ;
Whereas C. by his Letters of Presentation of the
date——Nominated and presented, &c. (here
narrate briefly the Presentation) Therefore we
Require you to pass to the Church of D. the——
Day of——being the Lord's Day, and there im-
mediatly after Divine Service, before dissolv-
ing of the Congregation, make due and lawful
Intimation to the Heritors and Parochiners of
the said Church, If they or any of them have
any reasonable thing to object against the said
E. (the Minister presented) why he should not
be Admitted Minister at the said Church they
may compear before us, on the—— Day of——
at——betwixt 10 and 11 Hours in the Forenoon
for making the same known to us with Cer-
tification to them, if they fail to compear

C C C

there

there, that they shall not be afterwards heard to object against him, but we will proceed to his Admission; And we Require you to cause just Copy hereof to be affix'd upon the most patent Door of the said Church: For doing whereof, this our Edict, which ye are to return to us duly Executed and Indorst, shall be your Warrant, Given under our hand, At——

The Collation by the Bishop, which is sign'd after Executing the Edict, and when none compears to object, is in this Form.

A. by the Mercy of God, Bishop of B. within whose Diocess, the Kirk and Paroch underwritten lyes, To —— my well beloved Brethren, or any one of them, our Commissioners to the effect after-specified; Specially Constitute, Greeting: Forasmuch as (Narrate the Edict and Presentation briefly) and now having taken tryal of the Literature, Qualifications and good Conversation of the said C. and finding him Fit, Able, and Qualified to Exercise the Office of the Ministry within the Church of God; and also having caus'd Intimate to the Heretors and Parochioners of the said Kirk; The said Presentation by way of Edict, Together with our Intimation to Admit him, conform thereto, and none having appeared to object in the contrar: And withall, having taken his Oath for acknowledging his Majesty's Royal Authority, due Obedience to us, his Ordinar——and
other

other Engagements used and necessar; We therefore have Admitted and Received, and by these Presents, &c. the said D. to be Minister at the said Kirk of ——— (here Copy the Request to the Bishop as in the Presentation) and to the effect the said A. may be Legally and Orderly settled therein; We Require you our Beloved Brethren, or any of you conjunctly and severally our Commissioners foresaids, To the effect underwritten specially Constitute to pass with the said C. to the said Church of ——— Manse and Gleib thereof respectively, and there with all Requisite Solemnities enter the said C. to the Service and Office of the Ministry at the said Kirk, and to give him Institution thereof, Corporal, Actual, and Real Possession of all pertaining to the samen, constant, Local, Modified Stipend, Manse, Gleib and others abovementioned, and that for the Crop and Year of God abovementioned, and thereafter during his Lifetime and Service of the Cure at the said Kirk, as said is: Requesting hereby the Lords of Council and Session upon sight of the foresaid Presentation with these Presents and the Institution to follow thereupon, &c. as in the Presentation, In Witness wherof, &c. The Seal of our Office is hereunto appended at ———

A Collation by a Moderator and Members of a Presbytry, who came in place of the Bishop after Abolishing of Episcopacy is thus ——— We the Moderator and Remanent Brethren of the Prebytry of ——— To our Lovit,

Brethren——A. Minister of B. and C. Minister of D. &c. Greeting, Forasmuch as, A. As undoubted Patron, &c. hath Nominated, &c. (here narrate as before the Presentation) Wit ye us, therefore, Conform to the said Presentation to have Examined and Tried the Literature Qualification, Life and Conversation of the said F. and have found him apt and able to Exerce the said Function of the Ministry, and in his Life Blameless and sincere, and to have received his Oath for acknowledging our S. L's Authority, and for giving due obedience to the Presbytery; And also, having caus'd Intimate to the Heretors (as in the Collation by the Bishop) Herefore we require you, That in continent after the sight hereof, ye pass to the said Paroch Kirk of B. and there in presence of an Notar and Famous witnesses, Enter him in Real and Actual Possession of the Stipend appointed for the said Kirk, Manse, Gleib and others specially set down in his Presentation thereto abovementioned, by delivering to him the Book of God called the Bible, and the Keyes of the Kirk-Door, as use is in such Cases, and that ye give him Institution in the said Kirk, upon the warrand of this our Precept and Collation, The which to do, we commit to you our full Power by these presents (written by, &c.) in witness whereof, thir Presents are Subscribed by the present Moderator of the Prebyrry of B. for himself, and in name and behalf of the Remanent Brethren of the said Presbytry.

Pre-

Presentation by a Patron of a School-Master.

BE it known, &c. undoubted Heretable Patron of the School of B. Constant, Modified Stipend, and Casualties thereto belonging, with the special Advice and Consent of — my Curators undersubscribing for their Interest; Forasmuch as, We are sufficiently informed of the Literature, Piety, Loyalty and good Conversation of C, and that he is sufficiently able and qualified to Exercise and Discharge the Duty and Function of School-master, and to teach the Four Parts of the Grammer, and to Instruct Children therein to the Glory of God, Benefite of Youth, and good of the Kingdom. Therefore, wit ye me with Advice and Consent of my saids Curators undersubscribing, to have nominated and presented, as I by the Tenor hereof, Nominate and present the said C. to be School-master and Teacher of the Grammer in all its Parts, and of Authors usual to be Taught therewith; As also, to Instruct Children to Read and Write in Vulgar Language, and to serve the Cure at the said School of B. during all the Days of his Lifetime: As also to Constant Modified Stipend belonging to the said Office, and formerly in use to be payed to the Incumbent thereat, to the Manse thereof and whole other Profits, Casualties, Duties
and

and Emoluments pertaining, or that are justly known to pertain thereto, which are here holden as repeated brevitatis causa, and that of the Cropt and Tear of God,——and Yearly and Termly in time coming during his Lifetime and Service of the said Cure at the said School now Vacant, fallen and become in my hands as Patron, and at our Gift and Presentation, by decease of——late School-master there, Requesting hereby the Lords of Counsel and Session upon sight of these our Letters of Presentation and Instrument of Institution to be given to the said C. thereupon, immediatly to direct Letters of Horning at his instance against all and sundry, the Heritors, Feuers, Fermourers, Tennents, Possessors and others adebted Lyable, and in use of Payment of the said Local Modified Stipend and other Casualities belonging to the said Cure, to readily Answer, Obey, and make thankful Payment to him of the same for the Crop above-written, and Yearly and Termly in time coming during his Lifetime and Service of the said Cure at the said School. In Witness whereof.

A Presentation of a Burser.

I A. Patron of the Bursery under-written to the principal Masters and Regents of the Colledge of——Greeting, Forasmuch as, the place of Bursery, within the said Colledge and Stipend or Pension of——belonging thereto found-

founded by—last possessed by B. is now by his finishing his Course of Philosophy in the said Colledge Vacant at our Gift and Presentation, and I being most willing that another Burser and Student of Philosophy be plac'd therein, and having Information and Knowledge of the Docility, Hope, and good Expectation of C. and of his Proficiency in the Latin and Greek Languages, and other Literature ; Therefore, I have nominated and presented, and by these presents, &c. the said C. to be Burser and Student of Philosophy in the said Colledge in place of B. and to the Yearly Pension belonging thereto, Requiring you the said principal Masters and Regent of the same Colledge, to receive him thereto, and to all the Profits, Priviledges and Commodities belonging to the same, and whereof any other of his Predecessors was in possession of, and to continue therein until the Expiration of his Course of Philosophy in the said Colledge. In Witness, &c.

It remainis, that we give the Form of the Clauses, which are common to all Writs, viz. The Clause of Registration, and Clause of Subscription, Date and Witnessing, or Testing the Writ.

Of the Clause of Registration.

THe word Register is deriv'd from the old French Gister, i. e. *In lecto repone-re*, and signifies the Office, Books and Rolls, where-

wherein the *Proceedings, Acts and Sentences* of any Court are Kept and Recorded. The chief Keeper of all the Records of Scotland, is called, *The Clerk of Register*, and by Cor-reption, *The Clerk Register*.

By the Laws of Scotland, all Executorial Diligence must proceed upon the Sentence of a Judge, which is either Compulsory, as when it proceeds upon a Process or Action intended before the Judge; or it is Voluntary, as in the Registration of private Obligations and other Deeds: And towards obtaining of this Decreet, a Procurator must be Employed: So that the Clause of Registration serves, for appointing a Procurator to Compear for the Party obliged, or signer of the Write, before any Competent Judge, and to consent that Decreet of Registration may be Interponed, to the end that Letters of Horning, Caption, and other Execution, in form as effects may be obtained thereupon: the Write having this Clause, is delivered to the Clerk of Court who keeps the Principal, and gives out an Extract thereof, which is called a *Decreet of Registration*.

When you are about to Register a Writ, regard must be had to the Competency of the Judicature, and of the Extent of the Judges Territory; for an Inferiour Judges Decreet or Precept, cannot be a Foundation of Diligence to be put to Execution by his

his own Officers, without the Limits of his Jurisdiction, wherefore the Party against whom Decreet of Registration is Extracted ought to live within that Judges Territory. But if the Diligence proceed *ex deliberatione*, or *per decretum Dominorum Concilii*, because the Jurisdiction of the Lords is universal over all the Leiges, the Diligence that is issued out by their Authority, can be put in Execution in any part of the Kingdom.

Tho' a Writing may be obligatory and binding without a Clause of Registration, yet it is not so perfect, except it have one, which is three-fold, either for Execution only, or for Preservation only, or for Preservation, and Execution if needful.

A Clause of Registration for Execution is requisite in all Writings and Obligations simple, wherein the performance is not deferred to an uncertain time; but the Obligation must certainly be fulfilled at the time prefixt in the Writing; Such are Bonds of borrowed Money, and the like.

A Clause of Registration for Preservation, has been invented by our Lawyers for the better preserving Writs of Importance in the publick Archives of the Kingdom, where they are more secure than in the Custody or Charter-Chests of private Persons;

and this Clause is in ancient Writs expressed by the words *ad futuram rei memoriam*, and ordinarily adjected to Writings, whereupon no Execution is needful: For a Clause of Registration for Execution, operates Preservation as well as this. And the Writings which contain either of these sorts of Registrations, is left in the Register of the Court, and an Authentick Extract of the Principal Signed by the Clerk Register, or the Clerk of Court, is delivered to the Party.

By the Act of Parliament 1698, all Probative Writs may be Registered in any publick Register competent, as if they did bear a Clause of Registration: And the Principals are to be given back. The design of this Registration is neither for Execution nor Preservation, but operates only, that the Extract in any civil Process, except in Improbation, is as probative as the principal.

The two Clauses of Registration, for Preservation and Execution if needful, are conjoyn'd and put together in Writings of Conveyance and others, where the principal and direct purpose of Parties is not to Oblige one another, but to transfer Dominion, or terminate Differences. But because, in these Writings, there is ordinarily an Obligation of Warrandice adjected. There:

Therefore in case it be incurred, Execution upon the Decreet of Registration will become needful.

The Clause of a Registration for Execution is thus. *And for the more Security, I Consent, and I am Content, that these presents be Insert and Registred in the Books of Council and Session, or in any other Judicatory competent, to have the strength of a Decreet of the Judges thereof interponed thereto: That Letters of Horning on six days, and other Execution needful in Form as effeirs, may pass thereupon, and for that effect, I Constitute ——— my Procurator, In witness wherof, &c.*

But more briefly thus, *And that these presents may be Registred in the Books of any Judicatory competent, that upon a Decreet of the Judges thereof, Letters of Horning on six days, and other Execution in form as effeirs, may pass: I Constitute, &c.*

If the days, to which Horning is to be Executed, (the ordinary space being 6, but may be made 10, 20, &c.) be not expressed in the Clause of Registration, the time in Law is interpreted to be 15 days, within which obedience must be given to the Charge.

The Clause of Registration for Preservation only, is in this form, ——— *Insert and Registred in the Books of Council and Session, or of any other Judicatory competent, therein to*

remain for Preservation, (or *ad futuram rei memoriam*) I constitute——my Procurators.

But the Clause of Registration of real Securities, or Renunciations, which, for publication thereof to the Leiges, are appointed to be Recorded in a special Register, is thus,———*Registred in the Books of Council and Session, or in the general or particular Register of Seasins, Reversions, or in any other Judges Books competent, therein to remain, for preservation.*

A Clause of Registration for Preservation and Execution if need be, is thus ——
Therein to remain for Preservation, and if need be, to have the strength of a Decreet of any of the Judges interponed thereto, that Letters of Horning and other Execution in form as effeirs may pass thereon, And Constitutes. Or thus more briefly, And if need to have the strength of a Decreet, and to receive all Execution necessary as effeirs, And Constitutes —— my Procurators

Of the Subscription of writs.

THE Clause of Subscription is in the end of every Write, and crowns and perfects all the former; for without it the writing is regarded as an useless peice of waste paper; Wherefore the Write must be signed by the party Granter thereof before
two

two subscribing Witnesses, who know the Party to be the Person he calls himself, if the body of the Paper be not written by the Signer himself; and tho' Holograph Writs signed without Witnesses are Obligatory and Probative, yet they are lyable to many Exceptions and Inconveniencies.

If the Party cannot write himself, either because he never was taught so to do, or that through supervenient Infirmities, Sickness, or other Accidents, he is become incapable to write, in that case two Notares and four Witnesses who know the Party, are made use of in Writings of Importance.

If the Granter of the Writ be Pupil, whether he can write or not, he needs not sign; for the subscription of the Tutor alone, is sufficient.

Not only the principal Parties, but also the Consenters should sign, and more especially if upon their Consent and Subscription, the strength and effect of the Paper depend; as is the Consent of a Husband and of Curators, to the Deeds done by the Wife and the Minor, tho' in other Cases the Subscription of the principal Party operates against himself.

By the Act of Parliament 1681, the Name and Designation of the Writer and Witnesses, must of necessity be insert and expressed in the body of the Writ, which is done in the Clause of Subscription, and by the

the 17th *Act Parl.* 1593, the Name and Designation of the Writer, is ordained to be insert in the hinder end of the Writ, before inserting of the Witnesses ; but by Practice, the Designation of the Writer may be insert with that of the Witnesses.

The various Forms of the Clause of Subscription.

In witness whereof I have signed these presents (written by A.) at Edinburgh, &c. And this is used albeit a Party sign by two Notars before four Witnesses, quia quod quis per alium facit per se facere videtur.

If the Writ be Holograph, — *In witness whereof I have written and subscribed these presents with my hand at Edinburgh.*

When the Tutor signs for his Pupil — *In witness whereof I for my self and in name and behalf of my said Pupil, have subscribed these presents.*

When the writ is granted by Principals and Consenters, — *In Witness whereof I with consent foresaid. Or, I and the said Consenters have subscribed these presents. Or in general, In witness whereof we have signed these presents.*

Of the Date and Testing of Writs.

IN Scotland, no Paper is formal and Valid without a date, That is, except the Writing or Obligation express the place where

where, the day of the Month, and the year of God when the same was signed by the Party or Parties; and this date, in all single Writs, such I mean as need only be Signed by one of the Parties Contractors, is expressed after the Clause of Subscription. But in *Bipartite* or *Tripartite* Writs, where the Subscription of both Contractors is requisite to make the Contract Formal and Valid, the date is at the beginning, as may be seen in the foregoing Examples of Contracts, tho' nevertheless, the same date is relatively expressed after the Clause of Subscription.

If the Writ be Signed by the several Subscribers at diverse places or at different days, this must be expressed in the date, tho' the respective places and days, which agree to the several Subscribers, is fully expressed in that part of the Writ, which rehearſes the Names and Designations of the Witnesses, as will be more plain in the following Instances and Examples.

It is always adviseable, to have Witnesses to the Parties Subscription, even of Holograph Writs, and it is absolutely necessary in Writs not write by the Subscriber, and which the Writer sets down after the date, in the end of the Paper, or after the Subscription, and this is the last Clause of a Writ.

In simple Writs, these two Clauses are
thus,

thus, *In Witness whereof, &c. I have Subscribed these presents at Edinburgh the first day of October, in the Year of God 1715, before these Witnesses. A. B. and C. his Servant.*

When there are two Subscribers, who Sign at different places, tho' upon the same day and before the same Witnesses, you write thus, *At Edinburgh and Leith the first day of October 1715. Before these Witnesses, viz. To the Subscription of the said A. at Edinburgh, and to the Subscription of the said B. at Leith, C of D and E. of F.*

If two or more Subscribers Sign at the same place, but upon different days, and before the same Witnesses, The date and testing of the Writ is thus, *At Edinburgh, the first and fifth days of October 1715; (Or, when the Months are different, You say, the first day of October and the fifth day of November 1715, Or again, when the two Subscriptions are not in the same Year, you express the date thus, The first day December 1715, and the tenth day of January 1716) before these Witnesses, viz. To the Subscription of the said A. upon the said first day of October; And the Subscription of the said B. upon the said fifth day of the same Month C. of D. and E. of F.*

If there be different Witnesses to the two Subscriptions, you express it thus, ———
Before these Witnesses respective, viz. To the Sub-

Subscription of the said A. C. of D. and E. of F. and to the Subscription of the said B. G. of H. and I. of K.

When two Parties Sign at different places, upon different days, before different Witnesses, It is thus expressed; *At Edinburgh and Berwick, the first day of December 1715, and the tenth day of January 1716, Before these Witnesses respectively, viz. To the Subscription of the said A. at Edinburgh, the said first day of December 1715, C. of D. and E. of F. and to the Subscription of the said B. at Berwick, the said tenth day of January 1716, G. of H. and I. of K.*

In Contracts, or Bipartite and Tripartite Writs, the date is at the head of the Writ, and is expressed as in the Cases already set down; but the Clause of Subscription is thus, ——— *Have Subscribed these presents, Day, Place, Month, and Year of God above-written, before these Witnesses, &c.* conform to the Cases already mentioned. But I think this a better Form and Stile ——— *have Subscribed these presents, at the place or places, and upon the day (or days) of the Month (or Months) in the Year (or Years) of God above-rehearsed, before these Witnesses, &c.*

If there be a Marginal Note, the same must be Signed; and the Testing of the Writ must bear, that the Signing Witnesses to the Subscription of the body of the Writ are also Witnesses to the Subscription

of the Marginal Note, thus—*Before these Witnesses, A. and B. who are also Witnesses,* (and in case there be blanks, which are filled up, you say, *To the filling up of the blanks, in the body of the Writ, and*) *To the Subscription of the Marginal Note.*

If the Writer be one of the Witnesses, and in the Clause of Subscription is named and designed Writer, in the Testing he may be designed thus, *Before these Witnesses A. and B. Writer hereof.*

If the Writer of the body of the Writ be not present at the Subscription, so that another Person fill up the Blanks, and Writ the Date and Witnesses Names, if he be also a Witness, you say,———*B. filler up of the Blanks, and Writer of the Date and Witnesses Names.* Or if he be not a Witness, after the Witnesses Names, you say, *The Blanks, Date and Witnesses Names being filled up and Written by C.*

Thus much of the Form and Stile of these Clauses: What is needful to be notic'd and observ'd in order to the Formalities of Writs, and the Import in Law of their several Clauses, is referred to my *Analytical and Pomological Treatise of Obligations, Securities and Conveyances.*

Seeing, by some late Acts of the *British Parliament*, It is appointed that the Parchment or Paper on which several Conveyances, and Deeds are written must be Stamped and pay a Duty and Tax, It is fit to know, what these Securities are, And first, By an Act in the Tenth Year of Queen *Ann's* Reign 1712.

Every Skin or piece of Vellum or Parchment, and Sheet or piece of Paper.	On which shall be Ingrossed or Written any	Instrument of Resignation of any Heretable Right as	Messuage	}	0	2	3
			House				
			Lands				
			Tenements				
			Hereditaments				
			Tythes				
		Charter of	Mills	}	0	2	3
			Fishing, &c.				
			Resignation	}	0	2	3
			Confirmation				
			Novodamus				
			Apprying				
			Adjudication	}	0	2	3
			Retour of any Service of Heirs	}	0	2	3
			Precept of Clareconstat				
			Mortgage, or Wadset	}	0	2	3
			Heretable Bond				
			Alienation or Disposition				
			Charter				
			Precept of Clareconstat				
			Retour				
			Apprying				
			Adjudication.				

E e e 2

And

And also by an Act in the Twelfth Year of
Queen Ann's Reign 1712.

Pays lib. sh. d.

	{	Honour Dignity Promotion Franchise Liberty, or Priviledge	}	Person or Body	{	Politick or Corporate	}	2 0 0
		Pardon for any Crime						
		Reprive	{	from a fine or Forfeiture		}	2 0 0	
		or		exceeding 100 lib.				
		Relaxation	{	or		}		
				from Corporal Punishment				
Evry Skin or Piece, &c.	{	Grant from His Majesty, of a Sum exceeding 100 lib. sterl. which shall pais, Great, o Privy Seal alone : : : : : 2 0 0						
		Grant of an Office or Employment in Great-Britain, yielding above 50 lib. Value per Annum. : : 2 0 0						
				Advocat	:	:	:	2 0 0
				Attorney	:	:	:	2 0 0
				Clerk	:	:	:	2 0 0
		Admittance, or Instrument for admit- ting of	{	A Fellow of the Colledge of Physicians			2 0 0	
				Notary				
				Procurator	:	:	:	2 0 0
				Any Officer in a Court or Corporation not being Annual, yielding not under 10 lib. Value				2 0 0
				Appeal from the High Court of Admirali y				
				Letters of Mart.				0 5 0
								In-

Every Skin or Piece, &c.	{ Institution or Licence to Preach	} made by a Pres- bytry	0	5	0
	{ Beneficial Warrant Bond All Deeds not otherwise charg'd Indenture Lease		0	2	6
			0	0	6
			0	0	6
			0	0	6

Excepted Bail-Bonds, and Assignments thereof, Indentures for binding poor Parish and Charity Children Apprentices.

Transfers of Stock.	{ In any Company Society Incorporation		0	6	9
			0	6	9
			0	6	9

These respective Duties, are to be charged upon every one, of the things or Matters aforesaid, Ingross'd in one piece of *Vellum*, *Parchment*, or *Paper*.

All Writings, Rights, and Obligations written on *Vellum*, *Parchment* or *Paper*, not marked with the Stamps suited for the Matters above-specified, shall not be available in Law or Equity, unless as well the above duty respective be pay'd as the Sum of 5 *lib. Sterl.* for every such thing.

But seeing the general Name of Deeds and Baill-Bonds, want Explication, I sub-join

join the Opinion of Gentlemen Learned in the Law, shewing the name of such Conveyances and Bonds, in *Scotland* as may be thought to fall under that Denomination, and which are to be written on stamped Paper or Parchment.

ALL Bonds and Obligations, whether for payment of Sums of Money, or for performance of Deeds.

All Assignations, Translations, Retrocessions and other Conveyances of Personal Rights.

All Dispositions of any Moveable Subject and Conveyances thereof.

All Backbonds, Declarations of Trust, all kind of Procuratories and Factories.

All Total Discharges of Personal Bonds, Obligements and Contracts for payment of Money or performing of Facts or Deeds, and also Total Discharges of Decrets and Sentences.

Bonds of Provision to one or more Children are to pay as one Deed.

Contracts of Marriage, Victual Contracts, Contracts of Excambion, Charter Parties, and all other Contracts and Agreements betwixt Parties.

It may be considered, if Submissions being in effect an Agreement betwixt Parties to have their differences amicably taken away upon

upon which Decrees Arbitral follow ought not to pay.

Venditions of Ships or parts thereof, or Conveyances of the same.

All kinds of Presentations by Patrons to Churches, Chappels, Bursaries Schools and other Benefices.

All Deeds of Mortification and Donations delivered by Parties in their own Lifetime.

All Revocations made by Minors, or by Wives, and Interdictions signed by Parties.

All Heretable Securities, as Heretable Bonds, Dispositions, Feu-Rights, Wadsets Procuratories of Resignation both *in favorem* & *ad remanentiam*, and Precepts of Seisin when written on Papers apart, Reversions, Regresses, Renunciations and Grants of Redemption, Discharges of Reversion, and all Rights and Conveyances of, and concerning such Heretable Securities.

All kind of Real Servitudes, granted by one Party to another, affecting the Granters Estate, whether in City or Country.

All Liferent Provisions, Tacks, Leases and Affedations, Gifts, of Escheat, Ward, Non-Entry, and other Casualties of Superiorities granted by Subjects, Superiors, and Grants and Commissions by Subjects to any Office or Employment in *Scotland*.

Bail-Bonds, being excepted from the Act, it's thought all Bonds of Cautionry to Answer for a Crime, or *Judicio fisci*, and Bonds of Cautionry in Suspensions and Loosing Arrestments, and Lawburrowses, and all Enactments

ments made in Court Books, where Caution is to be found, are to be all understood, as Bail-Bonds, and so fall under the Exception.

To remember that Charters Instruments of Sea-sin, Instruments of Resignation, and Precepts of Clareconstat, and Indentures, pay a Duty already in *Scotland*, and seem to be excepted from any other Duty by this Act.

Nomination of Tutors or Curators, seem not to pay, because not delivered in the Granters Life, and are of the Nature of Testaments which do not pay, in respect, that Deeds in *England* are only understood such as are Signed, Sealed and Delivered.

Since Bills and Inland Precepts do not pay in *England*; It's thought reasonable they should not pay in *Scotland*, even tho' they bear Interest and Penalty.

Instrumenes of Protest, and other Instruments, tho' they be Writes of Importance, yet they are not thought to be Deeds, because they are not Signed by Parties, but by Notaries, who are publick Officers, and of the nature of Judicial Acts.

Albeit it be agreed, that when Stamped Writes are put in the Register, the Extract Signed by the Clerk needs not to be Stamped; yet, because by the Extract, it will not appear, whether the principal Paper Registered be Stamped or not, it's fit to evite Fraud, that the Extract Signed by the Clerk bear, that the principal which lyes in the Clerks Hands is written on Stamped Paper, and if the Extract do not bear so, the same ought not to make Faith till it be instructed, that the principal Write is Stamped.



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 or } or } Tutor for his Pupil.
 Society } for others as } Minor with consent of Curator
 or } with consent of } Party interdicted with consent of n-
 others, as } others, as } (terdictor
 } Wife with consent of Husband

Whether the Debitor be a single person or Society he is
 considered as

Principal { one } and these { with } { a } { one
 or } or } or } Cautioner } or
 many } without } many

2. The Variety of Bonds, is occasioned by the state of the
 Creditor, who if a single person takes the p. 4

Bond

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	to the Creditors own behoof extending to	}	his Heirs or Assignees. or to his own Heirs only or neither Heirs nor Assignees
Bond	for the behoof of another as to	{	1 Tutor 2 Curator 3 Factor 4 Administrator, as Thesau- rer or Box-master of an Incorporation.
	for himself and another as to	{	Parent and Child Husband and Wife
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